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INDIAN CONSTITUTION AND ADMINISTRATION

by
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(Author of *Groundwork of Political Science, Constitutional History of Britain, A History of Political Thought* etc.)



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For Parthasarathi, Soumitra and Sumit

**And
the young generation
upon whom rests
the future
of our**

DEMOCRACY

This book is with faith and hope inscribed.



PREFACE

The author has very often expressed his delight in writing books for the beginners. The delight is of extra-ordinary height when there is practically no book of like nature in the field.

The present work is meant for those who have no knowledge in this branch of study or those who have no time to devote to big scholarly volumes. This book, remarkable for its clarity of style and systematic presentation, is meant for those who wish to have a glimpse into the subject in a single breath. A special feature of the book is that emphasis has been laid on the recent writings and new views on the subject. The author feels that like all his previous works the present one will also be warmly received by the readers.

The author cannot but keep on records his indebtedness to the members and staff of the Library of the Indian Law Institute, New Delhi for most courteously and promptly making available all relevant material for the present study. A word of thanks is due to Mr. J.P. Yadav of the Supreme Court of India for neatly typing out the entire manuscript as a labour of love.

—Arun Bhattacharjee

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EVOLUTION OF THE CONSTITUTION

What holds the country together ?

"Basically people's love for it and their willingness to work and sacrifice for it."

—**Indira Gandhi**

(Prime Minister of India)

Democracy exists not in the written or unwritten form of a constitution ; it exists in the hearts and minds of the peoples.

—**James Callaghan**

(Former Prime Minister of Britain
—in his Rajaji Endowment Lecture
delivered in New Delhi on
24 March 1981)

Our constitution is unique. Apart from being the longest in the world, it is meant for the second largest population with diverse people speaking different languages and professing varying religions.

—**Justice J.M. Shelat**

in *Kesavananda Bharati v. State of Kerala*
(1973) 4 SCC 225

Government and Judges might come and go but democracy, the basic features of the constitution should remain eternal

—**Justice Y.V. Chandrachud**
(Chief Justice of India)

Social justice is the conscience of our constitution, the state is the promoter of economic justice, the founding faith which sustains the constitution and the country is Indian humanity.

—**Justice V.R. Krishna Iyer**
(Former Judge of the Supreme
Court of India)

The wheels of fate will someday compel the English to give up their Indian empire. But what kind of India will they leave behind, what stark misery ? When the stream of their country's administration runs dry at last, what a waste of mud and filth will they leave behind them ?

—**Rabindranath Tagore**

*Forget not that the greatest curse for a man is to remain a slave.
Forget not that the greatest crime is to compromise with injustice
and wrong.*

—Subhash Chandra Bose

*It is the biggest abdication of power in modern history in a
non-violent way made by any imperialist power to any people
and I hope Indian nationalist leaders will appreciate this offer
made on a gold platter.*

—Late Harold J. Laski

(Socialist thinker of England)

*All constitutions are the heirs of the past as well as the testators
of the future.*

—Sir Ivor Jennings

(Constitutional commentator)

EVOLUTION OF THE CONSTITUTION

The Constitution of India had a story of evolution and development

India won her independence on 15 August 1947. The country got her present constitution on 26 January 1950, when India became a republic. The creation of the present constitution was not done overnight. Its growth and development is associated with the political events of the British rule in India. It will be of use if we make an attempt to survey the growth of the constitution and discuss the different constitutional acts that were at work as bricks and mortars for the making of the present constitution.

It has been rightly said that political science without history has no root. It is, therefore, not possible to understand the present constitution of India unless we can trace the present system from the beginning. To begin with, we must go two centuries back when the East India Company from England came to India for trades and commerce. This company slowly and steadily assumed all political powers. So we are to cover the constitutional history for two centuries. We shall see that the only difference between the present constitution and the constitutional documents of these two centuries is that while the present constitution is made by the people of the country, the old works were imposed by an imperial power, namely the British empire.

Two aspects of the Constitutional growth

One interesting thing of the constitutional history of India is that it has two divergent forces—one of increasing the imperial powers and another of increasing the political powers of the people of the country. For the purpose of our study we may divide up the constitutional history into two parts, one upto 1858 and another

from 1858 to the commencement of the new constitution. The climax of the absolute imperial power was in the Government of India Act of 1858. After 1858 the accumulated imperial powers began to split up and it was totally decentralised with the coming of the new constitution.

A brief resume of the necessity of different Acts during the period

The British rule in India originated in 1600 when a charter of trade in the east was granted to the East India Company by the queen of England. The East India Company carried on trades and occupied territories at the expense of the Mughal empire. By the end of the seventeenth century the Mughal empire was in the decline. In 1757 Clive by his victory in the battle of Plassey laid down the foundation stone of the British empire. Ten years later in 1767 the Mughal empire granted the *dewani* of Bengal, Bihar and Orissa to the East India company. So the East India Company from now became the political rulers rather than mere tradesmen. By getting political powers, the officers of the East India Company indulged in corrupt practices. To remove the corruption, the British government had to participate in Indian administration. The result was Lord North's Regulating Act of 1773 which provided for a Governor and a council consisting of 4 members for the administration of Bengal. This act made the Governor-General powerless. So, came Pitt's India Act which provided a powerful Governor-General. A board of control was established in London to supervise the administration of India. Then came the Charter Acts of 1833 and 1853. The Act of 1833 completely centralised administration in India. The Governor-General of Bengal became the Governor-General of India. The Act of 1853 separated the executive power from the legislative powers. For the first time a legislative council was established with 12 members. In 1857 the Sepoy Mutiny shook the British administration to its foundation. When the revolt was suppressed, the British government took direct interest in Indian administration. So all powers of the East India Company were taken away. The result was the Government of India Act of 1858 which linked up India and England under the crown. The post of Secretary of State for India was created with a council of 15 members known as the council of India. The Secretary of State for India governed the Indian administration through the Governor-General. This was the climax of the British imperial power in India.

The Indian Councils Act of 1861 was the beginning of a new chapter. It allowed the Indians to become members of the council. But

it was the Governor-General who would nominate them. By the Indian Councils Act of 1892 the nomination was made by the universities, Bengal chamber of commerce, provincial legislature and district boards. The crown was given the powers to criticise the financial matters and to put questions. Next came Morley-Minto Reforms and the Indian Councils Act of 1909 which provided that the legislative councils could vote on the budget. By the Montagu-Chelmsford report and the Government of India Act of 1919, the Central Legislature was divided into two parts—the Legislative Assembly and the council of states. No bill could become an act unless it was passed by both the houses. But the Governor-General could veto all works of the legislature. Then came the Government of India act 1935 which provided for two kinds of functions—one for the centre and another for the provinces. On 15 August 1947 India became an independent country by putting an end to the British rule and on 26 January 1950 India became a sovereign democratic republic and formed a government by the people, of the people and for the people. From that day, the new constitution came into existence. The post of the Governor-General was abolished and the post of the President was introduced instead. The new constitution did not break away in structure from its old traditions. It only introduced a new democratic spirit in the political life of India.

Rise of Imperial Powers

Lord North's Regulating Act

Lord North's Regulating Act, 1773 was the first act passed by the British parliament about the administration of India. It is a landmark in the constitutional history of India. It transferred the powers of the East India Company to the parliament of England. The Act made the following provisions :

The main provisions of the Act—(1) The Act provided for the appointment of a Governor-General and a council consisting of 4 members for the administration of Bengal. The members of the council were appointed for a period of 5 years. They could be removed only by the crown. The Governor-General had to work in accordance with the majority opinion of the council. He could not override the majority opinion of the council.

(2) The Governors of Bombay and Madras were subordinate to the Governor-General of Bengal. If they would not carry out the orders of the Governor-General in Council, they could be suspended.

(3) The act gave the right of vote for the directors of the company to every shareholders possessing shares of £ 1000 for one year. The directors were to be elected for 4 years, rather than for one year.

(4) A Supreme Court was established at Calcutta consisting of one Chief Justice and three other judges. This court had powers of both giving judgement in original cases and giving judgement in cases of appeal.

(5) The act made it clear that acceptance of bribes and presents by the servants of the company would be illegal. And any person doing this crime would be called back to England.

Criticism of the Act—The Regulating Act had defects more than one. The following criticisms may be levelled against this act :

(1) The Governor-General was at the mercy of the council. In fact, he was ignored by the council and so, in many cases he had to carry out a policy which he himself did not like.

(2) The control of Bengal over Bombay and Madras did not work satisfactorily.

(3) The board of directors was to be elected only by the rich share-holders. More than 1246 small share-holders could not give their votes. So they had no voice in the administration.

(4) The powers of the Supreme Court were not clearly stated. A serious problem arose because there were no clear-cut powers of the Supreme Court and the Governor-General-in-council. Again, the act did not tell which law the Supreme Court had to conduct—the Hindu laws or the Munslim laws or English laws. This made the matter most complicated.

So the Regulating Act was full of extreme defects.

Pitt's India Act (1784)

Lord North's Regulating Act had many defects. So, as an improvement over the Regulating Act, came Pitt's India Act which made the following Provisions :

(1) A board of control consisting of 6 members was established. But in fact, the real power was exercised by the President of the Board. The board of control was given powers of supervision and control over Indian administration.

(2) The Governor-General-in-council was given the powers and authority to control and direct the provinces. The Governor-General was to be appointed by the directors with the approval of the crown. Under the Regulating Act the council of the Governor-

General consisted of 4 members. But in the Pitt's India Act the Council was to consist of 3 members.

(3) The Governor-General-in-council had no right to declare war or make peace without the permission of a special body called the Court of Directors.

Criticism of the Act—The act had the following defects :

(1) As a result of the constant changes of the members of the council, even a weak man could become the Governor-General.

(2) The President of the board of control could misuse his powers as he was not bound to submit his accounts to the parliament.

(3) The relation between the board of control and the court of directors was not clear. So, it was a sort of dual control over the Indian administration. Under such an arrangement the position of the Governor-General could not be happy.

The Charter Act of 1833

After 1830 the whole of Europe was in a mood of reforms. And so the British parliament very naturally felt that some constitutional reforms should be done for India. And as a result came the Charter Act of 1833, which made the following provisions :

Main provisions of the Charter Act of 1833—(1) The centre of Indian administration was transferred from England to India. The only authority to make laws in India was the Governor-General in Council that was given the powers to supervise and direct the civil and military affairs of the Company.

(2) The act centralised the administration in India. The Governor-General of Bengal became the Governor-General of India and the Governors of Bombay and Madras were subordinate to him.

(3) The act centralised the legislative works of the country. Before 1833 the powers of the Governor-General were not clear. But from now it was clear that the Governor-General in council could make acts for all over India. As a result, the laws passed by the government of India were to be called "Acts." Formerly, the laws of Bengal, Madras and Bombay were called Regulations. Now Bombay and Madras lost their right to make their own laws.

(4) Another achievement of the Act of 1833 was that it simplified and codified the laws of India. Before 1833 the laws of India were imperfect and complex, because there were various laws like the Hindu Laws, the Muslim Laws and the English Laws. A uniform law was now made out for all over India.

Criticism of the Act—The Act had the following drawbacks :

- (1) The Charter Act of 1833 did not separate the legislative powers from the executive powers. So the system remained absolute.
- (2) The most serious defect of the Charter Act of 1833 was that no Indian was included in the legislative council. So many acts were passed by the council without proper knowledge and needs of the Indians.

The Charter Act of 1853

The Charter Act of 1853 was the last of all the Charter Acts of India. It came as an improvement over the Charter Act of 1833. The Charter Act of 1853 made the following provisions :

Main provisions of the Act—(1) The post of a separate Governor was created for Bengal. This was necessary to relieve the Governor-General of India of the works of Bengal.

(2) The Governor-General was given powers to nominate a Vice-President of his council.

(3) The consent of the Governor-General was necessary for all legislative proposals.

(4) The provinces were allowed to send one representative to the central legislative council. No work about the province could be done, if the member from that province was not present.

(5) The council in the legislative capacity consisted of 12 members.

The Government of India Act of 1858

The Government of India Act of 1858 is the climax of the absolute imperial power of the British rule in India. The Act made the following provisions :

Main Provisions of the Act—(1) The act provided that the government of England would take direct interest in the administration of India. By this act the Indian administration passed from the hands of the East India Company to the hands of the crown. The Crown took all responsibilities of the military and naval forces.

(2) A new post of the Secretary of State for India was created to help the crown in Indian administration. The Secretary of State for India was assisted by a Council of 15 members known as the Council of India. This Council was to consist of people of England alone. Out of the 15 members some were nominees of the crown and others were the representatives of the East India Company. The Secretary of

State was responsible to the British parliament and he governed India through the Governor-General who was assisted by an executive council.

(3) The board of control and the court of directors were abolished and their powers were transferred to the Secretary of State for India and his council of India.

(4) The administration of the country was unitary and centralised. Though there were provinces with a Governor, the Governor had full control over the provinces.

(5) The parliament of England and not the legislative council in India took direct interests in Indian affairs. In the British parliament Indian affairs were discussed, bills could be introduced and criticism was allowed.

Criticism of the Act—(1) The whole system was absolutely imperial. The people of India had no voice in the government of the country.

(2) All powers rested with one man i.e., the Secretary of State for India. As he was not responsible to the legislative council, his works were not in touch with the Indians.

(3) The Government of India Act of 1858 was the result of the Sepoy Mutiny and so the crown tightened the administration of India. It was the breaking point of the British imperial power in India. After 1858 the imperial control began to decrease in a descending scale when at last the imperial control was totally abolished from India in 1947.

Decline of the imperial control and growth of people's powers

The Indian Councils Act of 1861

The Indian Councils Act of 1861 laid the frame-work around which all future works of a parliament in India grew up. For the first time the Indians were included in the legislative council. The Act of 1861 made the following provisions :

Main provisions of the Act—(1) As regards the council of the Governor-General, the number was increased from 4 to 5.

(2) The legislative council was to be increased by not less than 6 and not more than 12 members who were to be nominated by the Governor-General. The members could be from the Indians. The function of the council was only legislative.

(3) The government of Bombay, Madras and Bengal were each under one Governor and each with one council.

(4) The central legislative council and the provincial council could make laws. There was no distinction between the central and the provincial subjects. But matters of finance, post office and telegraphs were under the central legislative council.

(5) The Governor-General was given the powers to nominate one President to preside over the meetings of the Council in his absence.

Criticism of the Act—The Indian Councils Act of 1861 introduced for the first time Indian people in the legislative council. But the legislative councils had limited powers. It could work upon those things alone that were allowed by the Governor-General. So, it could not criticise the policy and conducts of the government. Even in matters of legislation the Governor-General had sweeping powers by giving "veto" to the bills and by issuing ordinances which would have the same forces as acts.

Still, the Indian Councils Act of 1861 gave the frame-work of the future governance of the country; and the basis laid down by the act still in continuance even to-day. For the first time the Indians were included in the making of laws in the country. So, the Act of 1861 began a new chapter in the constitutional history of India.

The Indian Councils Act of 1892

The Indian Councils Act of 1892 is an improvement over the Indian Council Act of 1861. The following are the main provisions of the Act of 1892 :

Main Provisions of the Act—(1) The non-official members of the legislative council were to be nominated not by the Governor-General but by the university, the Bengal chamber of the commerce, provincial legislature, the district board etc.

(2) The council was given the powers to discuss the annual statement of the budget and criticise the financial policy of the government. The council was given the right to ask questions to the government. A previous notice of 6 days was necessary for asking questions.

(3) The legislative council now consisted of 24 members—14 officials, 4 elected non-official and 5 nominated non-official.

(4) As the freedom movement in India brought pressure upon the British, the Act of 1892 allowed election by the people. But the elected members could take their seats after being nominated by the government.

Criticism of the Act—(1) The Act of 1892 could not satisfy the people of India. There was no assembly of the people in the real sense. The few elected members could do nothing before the vast non-elected members.

(2) The council had no full control over the budget. Again, the right of asking questions to the government could be refused by the President of the council.

(3) The Governor-General was given immense powers. He was all-in-all and the council could not oppose him.

(4) Again, the system of election was not fair. The elected members got their seats only when approved of by the Governor-General. So their seat was not a matter of right but was a matter of grace by the Governor-General.

The Morley-Minto Reforms and the Indian Councils Act of 1909

The Indian Council Act of 1862 and 1892 introduced people's representatives in the council and more progress in that line was made in the Indian Councils Act of 1909. The act made the following provisions :

Main provisions of the Act—(1) In order to get more elected members, the size of the legislative council was enlarged. The council was to consist of 69 members—37 officials, 27 non-official elected members and 5 non-official nominated members.

(2) The functions of the legislative council were increased by allowing the members to move resolutions on the budget and almost on all matters of public interest. The members were given the right to ask questions in the council.

Criticisms of the Act—(1) The Act failed to fulfil the desires of the people, because it did not establish a parliamentary form of government. As the aim of the Act of 1909 was not to establish a responsible government, the result was that the people of India were dissatisfied.

(2) The system of election was not fair. As the system of election was indirect, the people elected the members of local bodies, these local bodies elected some electoral college and the electoral college elected the provincial legislative council which elected the members in the central legislative council. So the elected members had no touch with the people.

(3) The greatest defect of the Act of 1909 was the separate representation of the Muslims in the election. So the Act of 1909 bred the germ of Hindu-Muslim conflict. The ultimate result of this conflict was the partition of the country in 1947.

Montagu-Chelmsford Report and the Government of India Act of 1919

The Indian Councils Act of 1909 failed to satisfy the desires and aspirations of the Indians, because it did not establish a parliamentary system of government in the country. So, during the First World War the Indian National Congress started agitation for what is known as "Home rule". As a result, the British parliament offered the Government of India Act of 1919. Montagu was the Secretary of State for India and Chelmsford was the Governor-General and the Act of 1919 was based on their report. The Act of 1919 made the following provisions :

Main provisions of the Act—(1) *Dyarchy in the provisions*—A sort of double government or Dyarchy was established in the provinces. The subjects of the administration in the provinces were of two kinds—central and provincial. If a matter was of central subject, it was under the control of the Governor and his council. The matters of provincial subjects were decided by the Governor with the aid of the ministers who were responsible to the provincial legislative council.

(2) The control of the centre over the provinces was decreased—the provinces were now more free from the control of the centre. In fact, the provinces were more free in matters of administration, legislation and finance. The provincial budget was separated from the central budget and the provinces were allowed to raise revenue from their own provinces.

(3) *A more representative Indian legislature*—By the Act of 1919 the Indian Legislature became more representative and for the first time consisted of two houses—the upper house and the lower house. The upper house was called the councils of states composed of 60 members of whom 34 were elected. The lower house was called the legislative assembly composed of 144 members, of whom 144 were elected. The powers and functions of both the houses were almost equal. The election was on communal basis like the Act of 1909.

Criticisms of the Act—(1) The Act of 1919 failed to satisfy the people of India. Although a double government or dyarchy was established, the provinces were still at the mercy of the centre. It was the Governor-General who was the main key of the whole switch-board of the Indian administration. It was he who alone could decide which matter was central and which matter was provincial. So, when he had special interest in any matter, he could declare it central and in that case the provincial legislative assembly had nothing to do.

(2) The two kinds of subjects were not clearly defined. As a result one would touch the other. In that case, the system was unworkable.

(3) Again, the Governor was not a constitutional head and there was no collective responsibility of the ministers.

So the dyarchy introduced in the provinces by this act was a failure.

The Government of India Act of 1935

The most significant act of British India was the Government of India Act for 1935. As a matter of fact, the Act of 1935 was the basis upon which the present constitution of India grew up. The Act of 1935 had the following salient features :

Main features of the Act—(a) *Federation and provincial autonomy*—The unitary system of India was split up into a federation with the provinces as units.

(b) *Federation and provincial autonomy*—(1) The unitary system of India was split up into a federation with the provinces as units.

(ii) The Act of 1935 divided the legislative powers between the provinces and the centre and the provinces had full freedom within their jurisdiction.

(iii) The Governor was appointed by the crown and he acted on behalf of the crown and not as an agent of the Governor-General.

(b) *The Legislatures*—The central legislature consisted of two houses—the Federal Assembly and the council of states. The Act of 1935 clearly divided the legislative powers between the centre and the provinces. There was a federal (central) list in which the federal legislature was the only authority. There was a provincial list in which the provincial legislature had full powers. There was a concurrent list of common authority of both the centre and the provinces.

(c) *Dyarchy at the centre*—The functions of the Governor-General who was the head of the executive were divided into two groups. All matters like defence, external affairs and tribal affairs were within the absolute power of the Governor-General and in other matters the ministers had full powers.

(d) *The Federal Court*—A judicial tribunal called the Federal Court was established with one Chief Justice and other 6 judges to give judgement in cases of conflicts between different provinces.

Criticisms of the Act—(1) The Governor-General could “veto” a bill passed by the federal legislature.

(2) He could make ordinances which had the same force as acts. No bill could be introduced in the legislature without the previous permission of the Governor-General.

(3) The Governor-General was not the constitutional head. So, the desires of the people of India were not fulfilled by the Act of 1935.

*The Governor-General in the Government of India Act of 1935—*According to the Government of India Act of 1935 the union executive consisted of the Governor-General and a council of ministers. The ministers were the members of the legislature and were appointed by the Governor-General. The Governor-General was appointed by the crown for a period of 5 years. All executive works in India were in the name of the Governor-General. He was responsible only to the crown.

It may be remembered that the Act of 1935 introduced dyarchy in the centre and as such there was the Governor-General and the council of ministers in one set of powers and the Governor-General and his own council of 3 members in another set of powers. These members were responsible to the Governor-General alone. From this it is clear that in some affairs the Governor-General was all-in-all and these were in foreign affairs, defence, religion and tribal affairs. But there were other things in which the Governor-General had to act on the advice of the ministers. So, the Governor-General's powers were of two kinds—(i) where he was all powerful, and (ii) where he took the advice of the ministers.

(I) *Functions where the Governor-General was all powerful—*This can be divided up into four classes—(a) executive, (b) legislative, (c) financial, and (d) emergency.

(a) *Executive powers—*All matters like foreign affairs, defence, religion and tribal affairs were in the hands of the Governor-General. He would appoint the ministers and other high officers like the members of the union public service commission.

(d) *Legislative powers—*He could summon and dissolve the union legislature. No bill could become an act, if the Governor-General would not give his assent. He was free to give his assent or not. He could make ordinance which had the force of a legislative act. Moreover, he could himself make some acts of the name of the "Governor-General's Acts".

(c) *Financial powers—*No money bill could be introduced in the legislature without the previous permission of the Governor-General. Again, he would fix and decide the budget and taxes.

(d) *Emergency powers*—The Governor-General was given the emergency powers under the Government of India Act of 1935. The Governor-General could declare emergency and take upon himself all the functions of the government.

(ii) *Functions where the Governor-General took the advice of the ministers*—But there were some functions in which the Governor-General took the advice of the ministers. These functions were about social customs, marriage and divorce, settlement of land disputes etc. In such matters the Governor-General ordinarily did not intervene and he readily agreed to the works of the council of ministers.

It was a normal practice of the Governor-General to accept the advice of the council of ministers. But he could override the ministers at his sweet will. So, it is clear that the Governor-General was not the constitutional head but the real ruler of India.

The Indian Independence Act of 1947—India won her independence in 1947. For that purpose the parliament of England made the Indian Independence Act which made the following provisions :

Main provisions of the Act—(1) *Abolition of the British Government from India*—The Act declared that with effect from 15 August 1947 the British rule in India would be over.

(2) *Abolition of the post of Secretary of State for India*—As the British rule in India was abolished, it was, therefore, but natural that the post of Secretary of State for India would be abolished.

(3) *The crown no longer the Source of authority*—so long as India was under the British rule, all functions of the government of India were in the name of "His Majesty." But after 15 August 1947 India and Pakistan became free from the control of the British government.

(4) *Partition of India*—The Act of 1947 divided the country into two parts—India and Pakistan, both free and independent.

(5) *The Governor-General and the provincial governors to act as constitutional heads*—The Governor-General and the Governors of the provinces were made constitutional heads and not actual rulers. So, their powers to declare laws known as the "Governor-General's Act" were abolished. This was definitely an improvement over the Act of 1935.

(6) *The Constituent Assembly to act temporarily as the Parliament of India*—An assembly was held with the representatives of the people to make a new constitution for independent India. The assembly was called the Constituent Assembly.

The Act of 1947 provided that until a new parliament was created according to the rules of the new constitution, the Constituent Assembly itself, meanwhile, would make laws. So the functions of the Constituent Assembly were two-fold—to make a new constitution and to work temporarily as the parliament of India.

CHAPTER II

THE PREAMBLE TO THE CONSTITUTION

The objective sought to be achieved by the constitution is declared in sonorous terms in the preamble. The preamble contains in a nutshell its ideals and its aspirations. The preamble is not a platitude but the mode of its realisation is worked out in detail in the constitution.

Late Justice K. Subba Rao
(Former Chief Justice of India)

The preamble embodies the fundamentals underlying the structure of the constitution. It serves several important purposes. Firstly, it indicates the source from which the constitution comes viz. the people of India. Next it contains the enacting clause which brings into force the constitution. In the third place, it declares the great rights and freedoms which the people of India intended to secure to all citizens and the basic type of government and polity which was to be established.

—Justice J. M. Shelat
in *Kesavananda Bharati v State of Kerala*,
(1973) 4 SCC 225

A constitution is the basic law relating to the government of the country. It is a living thing, living not for one or two generations but for generations to come.

—Justice H.R. Khanna
(Former Judge, The Supreme Court of India)

THE PREAMBLE TO THE CONSTITUTION

Importance of the constitution

A constitution is a document that contains the fundamental law of a nation. Most countries including India has a written constitution. The only exception is the constitution of England which is unwritten. A constitution spells out the powers and privileges of the holders of high position like the President, Prime Minister, Speaker etc. It also tells what are the rights of the citizens. It is necessary that the language of the constitution should be clear and the treatment is precise. The expression should be plain and direct. Otherwise there will be frequent disputes about the interpretation of the provisions.

The Articles of the constitution are laws of the land. Nay, they are the supreme law. All laws are subordinate to the constitutional law. If any law conflicts with the constitution that law will be void to that extent. Again, everybody in India including the President and the Prime Minister are under the constitution. Before taking office they are to take an oath pledging their allegiance to the constitution. The members of the parliament as also the legislative assemblies are to take such an oath. But in that matter the President's oath is a bit different. In his oath he takes the pledge that he "will preserve, protect and defend the constitution". Mr. N.A. Palkhivala, a renowned authority on the constitution suggests that if the basic structure of the constitution is amended, the President will withhold his assent, otherwise such an assent will be tantamount to infringing the oath that was administered to the President.

Making the Constitution of India

The framing of the constitution calls for the highest statecraft. Those entrusted with it have to realise the practical needs of the government and have, at the same time, to keep in view the ideals which have inspired the nation. Men of proven grasp of affairs and of diversified experience through study of history not only of their country but also of other countries can be entrusted with the task of making the constitution. In this connection Justice J.M. Shelat rightly observed in the *Kesavananda Bharati's case*: "The constitution was chiselled and shaped by great political leaders and legal luminaries, most of whom had taken an active part in the struggle of freedom from the British yoke and who knew what domination of a foreign rule meant in the way of deprivation of basic freedoms and from the point of view of exploitation of the millions of Indians". It is indeed a unique occasion in the history of a nation when a generation of men is called upon to frame the constitution of a country. Such occasions do not recur and it becomes essential that those entrusted with the task should be conscious of their great role, because on their wisdom and sagacity depend the mode of life and happiness of succeeding generations of men, women and children. Fortunately for us, those entrusted with the task of framing the constitution of India were aware of their historic role and the supreme importance of the assignment.

On attainment of independence it was necessary to make a constitution for Indian republic. For that purpose a Constituent Assembly was established and it met at Delhi on 9 December 1947 for making the constitution. Dr. Rajendra Prasad who later on became the President of India presided over the Constituent Assembly. The members of the Constituent Assembly were mostly men who had earned eminence because of their scholarship or participation in the struggle for freedom. The most important thing was that for the first time the Indians were making fundamental laws for running the administration of the country without any influence from outside. It is to be remembered that the makers of the constitution of India were not framing a constitution afresh after a bloody revolution as in some other countries. In India political power was transferred in a peaceful manner. Hence the framers had to accept the administrative structure which had been in existence for a long time in the new framework. But it is not possible for anybody to foresee what would happen twenty or thirty years after. Thus to meet the challenge of

time the constitution had to be amended as many as forty five times. But there has been no basic change in the tone of the constitution. With regard to the scope of amendment of the constitution it is now settled by the decision of the Supreme Court in *Kesavananda Bharati* that everything of the constitution can be changed except the basic structure. What is the basic structure of the Constitution? This has been appropriately dealt with in Chapter 22 of this book.

Commencement of the Constitution of India

On 15 August 1947 India became politically free and she achieved the dream of political independence. But political freedom by itself is not adequate to meet the hopes and aspirations of the average citizens of the country. So the drafters of the constitution who had taken part in the struggle for political freedom gave to the country its constitution on 26 January 1950. On 26 January 1950 India was declared a republic. But the history of the day dates back still further. In 1930 this very day was observed throughout the country as the day of demand for full independence for India. Over the next two decades, this day had been observed as the Independence Day. Thus long before attaining the honour of being the Republic Day, this day had become memorable as one making the bravery and self-sacrifice of an awakened nation. The constitution guaranteed to all citizens justice—social, economic and political. On the pillars of this concept was set up the structure of a democratic welfare state. The pursuit of the said ideal keeps the country on the march. Judged from this point of view, 26 January 1950 is much more important than 15 August 1947. If the history of thirty-one years of Indian democracy is studied, it will disclose the fascinating picture of this continuous effort to move slowly and speedily towards socio-economic justice.

Salient features of the Constitution of India

The constitution of India is a mixture of almost all the constitutions of the world. So, the constitution of India has borrowed different elements from different constitutions. As a result, there are many opposite things in the constitutions. The following are the salient features of the constitution of India.

(1) *The Constitution is written*—The constitution of India is the longest written constitution in the world. The constitution originally contained as many as 395 Articles and 8 Schedules. According to Justice D.A. Desai of the Supreme Court of India: "The

constitution is a basic document. It was not enacted merely for the governance of the country. It reflected the hopes and aspirations of a nation just freed from colonial rule". According to Justice H. R. Khanna : "it is one of the lengthiest constitutions of the world and it has been subjected to perhaps the longest number of amendments."

(2) *The Constitution is rigid*—A written constitution is generally rigid and so is the constitution of India. The constitution can be amended by a special procedure and not like the simple process of making a law.

(3) *The constitution is federal in structure, though unitary in aim*—Although the aim of the constitution is unitary, the structure of the constitution is federal with the provinces or states as different units. Thus like all federal constitutions, the constitution of India provides for separate powers for the union and the states in the Union List and the State List respectively.

(4) *The constitution is parliamentary in form*—The constitution of India has a parliamentary or cabinet form of government. This is natural because India was for about two hundred years in close touch with England which has a strong parliamentary form of government.

(5) *The constitution is republic in character*—The constitution says that the people are the rulers of the country. The government of India is by the people, for the people and of the people. There will be no king or queen to rule over India.

(6) *The constitution provides for the post of a President*—Although the constitution provides for a parliamentary form of government, there is a President at the head of the executive powers. But his power is very formal. He is only the ceremonial head. Actual power lies in the parliament.

(7) *Rule of law is a distinguishing feature of Indian Constitution*—According to Dr. P.B. Gajendragadkar : "the rule of law is the most distinguishing feature of Indian democracy". This has two significant factors. The first factor is in relation to the mechanism of the making of Indian laws. All laws made by the parliament or the state legislature are subject to judicial scrutiny. Thus the courts of law come to exercise a decisive voice in the determination of the question as to whether such laws are valid or not. The other basis on which the validity of law can be challenged is in relation to the fundamental rights of the citizens guaranteed by the constitution. It is on the basis of these two grounds that the courts in India have been empowered to pronounce their verdict on the validity of legislative enactments. "It is from this point of view" said Dr. Gajendragadkar, "that we

can claim in India that the rule of law is the most distinguishing feature of Indian democracy”.

According to Dr. G.N. Joshi: “The exercise of the jurisdiction by the Supreme Court under Articles 32 and 136 and by the High Courts under Articles 226 and 227 has proved to be very effective in maintaining and strengthening the rule of law and has in fact proved to be an effective safeguard against the abuse of power by the executive authorities—a safeguard which is absolutely necessary when the functions of a welfare state are increasing every day involving the grant of additional power to the executive. Judicial review has, in practice, maintained and strengthened the rule of law and the democratic process and has had an educative and formulative influence”.

(8) *There are three organs of the government*—The constitution of India like any other constitution of a democratic country envisages three major branches of government. They are : 1. the legislative branch. 2. the executive branch and 3. the judicial branch. The main institution of the legislative branch is the parliament and the legislative bodies of various states. Both have been assigned their own jurisdiction. While national laws are the “last word” on national questions, state laws are the “last word” on questions involving the state. The executive here means the political executive. The council of ministers is the good example of such a political executive. Judiciary is the guardian of a democracy. In India judiciary is held in high esteem and is kept separate from the influence of the legislative or the executive branch. The democratic way of life postulates the efficient functioning of the three essential organs of the government. The legislature must act wisely, purposefully and with foresight. The executive must carry out the legislative decisions efficiently and must function in the most incorruptable manner. And the judiciary must check the validity of the legislative actions and safeguard the citizens against illegal actions either by the legislatures or by the executive. In a democratic set up, particularly where written constitution has been adopted, the courts are to act as the custodian of fundamental rights. The Supreme Court is the watch tower of the fundamental rights guaranteed to the citizens. About the respective position of the different organs of the government Justice J.M. Shelat rightly said in the case of *Kesavanda Bharati* : “The constitution being supreme, all the organs and bodies owe their existence to it. None can claim superiority over the other and each of them has to function within the four corners of the constitutional provisions. All the functionaries, be they legislators, members of the

executive or the judiciary take oath of allegiance to the constitution and derive their authority and jurisdiction from its provisions."

The preamble to the Constitution of India

Genesis of the preamble to the constitution

Every constitution of every country is made with some aims and objects. These aims and objects are called in one word the "preamble." So the constitution of India has its "preamble" which was enacted on 26 November 1949. The following aims are the preamble to the constitution of India.

One aim of the constitution is to make India a sovereign democratic republic. The people will be the source of all powers. The government will be by the people, for the people, and of the people. There will be no king or queen to reign in India.

A second aim is to give to all citizens of India social, economic and political justice. To make it simple, every citizen will get considerate treatment in the society, every citizen will get chances for economic development and every citizen whether rich or poor, educated or uneducated will have political right to vote in the election or to stand as a candidate in the election.

A third aim of the constitution is to give to every citizen liberty of thought, expression, belief and worship. To make it clear, all citizens will have the right to express their ideas in the newspapers or give their thought in books or public meetings. Similarly, every citizen will have the right to worship in his own way according to any religion he believes in.

A fourth aim is to give equality of status and opportunities to every citizen. There will be no difference between the Prime Minister and a poor labourer before the eyes of law.

The fifth and last aim of the constitution will be to bring a sense of brotherhood among all the people living all over the country. The people should feel that they are all children of the same motherland. In a word, the constitution aims at bringing socialism in the country.

The Preamble to the Constitution—words used and their meaning

The preamble is the key-note to the constitution. The preamble of the constitution means the object or aim of the constitution. The very day the Constituent Assembly first met Jawaharlal Nehru moved

a resolution about the object of the constitution. But this was adopted in an amended form which reads as :—

“WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens.

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation ;

IN OUR CONSTITUENT ASSEMBLY.....DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

By an amendment namely the forty-fourth Amendment in 1976 a little change was made, by inserting “socialist secular” in between “Sovereign” and “Democratic Republic”.

About the use and scope of the preamble to the constitution Justic H.R. Khanna observes : “A constitution is the basic law relating to the government of the country. It is a living thing, living not for one or two generations but for generations to come.” This was said in a clearer and more precise way by justice Story, a renowned judge of the United States of America who observed that the preamble to the constitution is “a key with which to open the minds of the makers of the constitution”.

The makers of the constitution considered it necessary to clearly emphasise that the principal object of the constitution is the development of a welfare state. This is the ideal or goal, to attain which the government will strive. This welfare state is rather a social order in which “justice, social, economic and political shall inform all the institutions of the national life.” Now a days we hear “improving the quality of life” and raising “living standards” which are in pursuit of a welfare state as enshrined in the preamble to the constitution.

Now it will be of use if we analyse the various terms like “sovereign”, “secular”, “democratic”, “republic”, “justice”, “liberty”, “equality”, “fraternity” etc. as ingrained in the preamble to the constitution.

Sovereign—By using the term “sovereign” Indian constitution makes a forthright declaration that India is an independent nation

free from the control of any other nation. Prior to the constitution, India was yoked under England and she had no power to make her own foreign policy or declare war or sign treaty with other nations. Now India got the status of other sovereign powers like England, France or United States of America.

Hence a question may arise : does India's membership of the international body like the Commonwealth of Nations a negation of her sovereignty ? The Commonwealth of Nations is an international body to promote the world-peace and international co-operation. Its membership is confined to those states that were sometimes under the British empire. As a matter of fact, all the old members of the British empire desired to keep their contacts with England. Thus England is the centre of the Commonwealth of Nations and the British crown is the binding knot of the member-states. Canada, Australia, South Africa and New Zealand are the four original members of the Commonwealth. India also is a member of the Commonwealth.

Now the question arises : is the membership of the Commonwealth detrimental to India's sovereignty ? At the time of framing the constitution the demand was there that India should leave the Commonwealth. This demand is also very often made by the Communist Party of India. But India stands to lose nothing from the Commonwealth. Her sovereignty is in no way affected by it. She is as independent as England. She has an independent foreign and economic policy. She has a republican form of government, while there is a hereditary monarchy in England. She has devalued her rupee without reference to England. She declared war against China in 1962 and against Pakistan in 1965 and 1971 without reference to England. Thus the membership of the Commonwealth has got nothing to do with the loss of sovereignty.

Socialist—The word "socialist" denotes the desire of the Congress Party in power to make the country a welfare state in which the government is concerned with the economic upliftment of the country and also of the people. It shows the endeavour of the present government to remove economic disparity between the rich and the poor. This is writ large in the economic planning and equitable distribution of the national wealth. The nationalisation of the vast majority of the banks, abolition of the privy purse and the government's taking over various industries in hand are in tune with the socialistic programme as enshrined in the preamble. It is true that by adding the word "socialist" we are not ushering in socialism overnight. It

is equally true that this addition has highlighted the objectives. The same applies to the addition of the word "secular". A socialist society is a non-exploitative society. Our constitution has accepted socialism as its objective for quite a long time by now.

Secular—The term "secular" stands for neutrality with regard to religion. According to the constitution, religion is entirely an affair of the individual and the government has nothing to do with religion. Jawaharlal Nehru truly said: "our constitution is based on this secular conception and gives freedom to all religions". Unlike Pakistan where the government patronises Islamic religion, in India religion is concerned with ethics and morals and is not mixed with politics. In India all the major religions of the world are practised. As the country believes in secularism, the government of India does not patronise any particular religion. All the major sacred days of every religion are public holidays in India. Any religious groups can establish and run educational institutions or charitable trusts. It is forbidden to impart any religious instruction in any educational institutions that receive the government grants. Thus in India religion is considered to be a private affair which is not to be interfered into by the government.

Democratic—The term "democratic" emphasises the liberal spirit and representative character of the government in India. There are three basic postulates in a democracy. The first postulate is that the government should be based on the consent of the people. The second basic postulate is that authority should reside in the majority. The third basic postulate is that the primary concern of the government is to preserve the civil liberties of the citizens.

Republic—"Republic" stands for absence of hereditary elements and that no public post will go to a person on grounds of birth. In India the President, the Prime Minister or all political executives are chosen by votes. No body can claim it on grounds of birth. But in England the monarchy is hereditary. The son or the daughter of the king can alone be the king or queen of England. So England is not a republic. The India constitution ushered in a new order in the country and abolished the erstwhile feudal system where the princes or *maharajas* had special status or privileges. Before independence there were as many as 562 princes or *maharajas*. With the coming of the constitution they lost all powers and privileges and their states got merged with the India republic.

Justice—Democracy cannot survive without justice and fair play. All persons in the country are under the law. And all must obey the

law irrespective of his status or position. All disputes and quarrels can be peacefully settled in a court of law. For that purpose the judiciary in India is independent like all other democratic countries. The constitution aims at equal justice for every citizen.

Liberty—We know that liberty was a slogan of the French Revolution. Liberty is the prize of a democracy. The drafters of the constitution did not lose sight of the fact that without civil liberty of the citizens democracy and independence would be meaningless. So a bundle of liberties has been given to the citizens. For that purpose the edge of the executive and legislative persons have been blunted. A citizen can freely move in the country, follow any profession he likes and may approach the courts when his rights are threatened.

According to Justice P. Jaganmohan Reddy, former Judge of the Supreme Court of India, democracy is meaningless without social, economic and political justice. To say in his words : "what is democracy without social, economic and political justice or what value will it have when its citizens have no liberty of thought, belief, faith or worship or where there is no equality of status and opportunity?"

Equality—The other slogan of the French Revolution was "equality". In India all citizens are equal in the eye of law. A person may be rich, other may be poor. One may be a minister, other may be a peon. But law looks upon them equally. The opportunities before them should also be equal. When there is inequality, there is unrest among the people. The mighty French Revolution broke out to remove inequality and to establish equality instead.

Fraternity—This emphasises that even though the Indians are divided into Hindus and Muslims, between Punjabis and Marathis, all belong to one family and all are co-citizens of India.

CHAPTER. III

DEMOCRACY AND FEDERALISM

—Justice M.H. Beg

(Former Chief Justice of India)

Democracy is not a state in which people act like sheep. Under democracy individual liberty of opinion and action is zealously guarded.

—Dr. B.R. Ambedkar

(Former Judge, Calcutta High Court and

constitutional commentator)

Democracy is an essential feature of the constitution.

—Mahatma Gandhi

—Justice Y.V. Chandrachud in *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299

India, that is Bharat, is a union of states. It is thus a federation though in setting up a federation we have topsy-turried the normal process of federations. India under a colonial rule was a unitary state, the provinces being the units of administration and the entire executive power was vested in the Viceroy and the Governor General of India. The Government of India Act, 1935 which envisaged a merger of the princely states for the first time conceived India to be a federation. Consequently, the provinces were demarcated states and a federation was set up with a flavour for strong centre.

—Justice D.A. Desai

(Judge of Supreme Court of India)

With the adoption of the constitution by the members of the Constituent Assembly on 26 November 1949, India became the largest democracy in the world.

—Granville Austin

(Political analyst)

Our co-operative federalism contains no rigid distribution of powers but provides a system of salutary checks and balances.

—Justice Y.V. Chandrachud, Judge, Supreme Court of India in *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

In a sense, therefore, the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which is to be nationally integrated, politically and economically co-ordinated.

—Justice M.H. Beg
(Former Chief Justice of India)

India is basically federal, but, of course, with striking unitary features.

—Dr. Durga Das Basu
(Former Judge, Calcutta High Court and
constitutional commentator)

DEMOCRACY AND FEDERALISM

Is India a democratic state ?

India is one of the most democratic countries of the world. In the preamble of the constitution, India is described as a sovereign democratic republic. We know that the opposite term of democracy is dictatorship. So, if India is not a democracy, she must be a dictatorship. So, if we can disprove that India is a dictatorship, we can thereby prove that she is a democracy.

A dictatorship is one where the ultimate power lies in a single man or in a single party, as in the case of Hitler of Germany or Mussolini of Italy. On the other hand, if the ultimate power lies in the people in general and the electorate in particular, the government is called democracy. Now let us examine the nature of the governance in India. The President of India is the head of the executive. He is an elected President like the President of the U.S.A. or France. The President of India is elected by an electoral college consisting of the elected members of both the houses of parliament and all the legislative assemblies and legislative councils of the states. So the President of India is indirectly a representative of the people. The Prime Minister of India and all other ministers and members of the parliament are directly elected by the people. The cabinet is responsible to the parliament and the parliament is responsible to the people. Thus India is an indirect or representative democracy. Same is the case in the governance of different provinces in India.

Apart from the broad democratic foundation, there are various other traits that will establish that India is a democracy. The different political parties which are essential for democracy are very alive in India. The opposition parties criticise the government and

correct all wrongs and prevent any dictatorial design of the government. An independent judiciary is another effective weapon to safeguard democracy. The Supreme Court works as the guardian of the fundamental rights of the citizens. Thus the freedom of press, freedom of speech, freedom from arbitrary arrest and neutrality of the government about religion confirm further, if any further confirmation is necessary, to prove that India is a democracy. India is a government by the people, for the people, and of the people. She is one of the best democratic countries of the world.

Indian democracy compared to other democracies of the world

Democracy is perhaps the most abused word in the English language, with dictators and demagogues alike claiming to subscribe to the ideal. But the number of genuinely democratic countries has been dwindling speedily particularly in the Third World where India stands out to claim as the largest democracy in the whole world. England has all along been regarded as the oldest and the United States the richest democracy. It is the British parliamentary system of government which its erstwhile colonists sought to copy on achieving independence only to switch over to dictatorship or one-party government as it happened in Pakistan and Bangladesh to mention a few. India is one of the few nations that still adheres to the British pattern of democracy.

In India democracy is not an abused word, but a live political philosophy in the true sense of the term. True, the political system in India does not always give just and fair treatment to the public, but it is by far the best in the Third World with a public having a say and a sense of participation in the nation's affairs.

Two aspects of democracy

Democracy consists of two things. One implies matters like adult suffrage, frequent elections, the fundamental freedoms, the principle of majority rule and similar provisions in the legal and constitutional system. Secondly, democracy implies a certain extent of social and economic equality, the fundamental freedoms not merely announced in the constitution but actually in operation as safeguarded by the courts of law and by the court of public opinion too, faith in the method of persuasion, the absence of corruption in politics and administration, effective respect for the right of the minorities of different kinds and political morality in general. Without this second set of principles implanted in the constitution of a society

and in the minds of its men and women, whatever rights are enunciated in a paper constitution will be as dust and tinsel.

It is when we think of the implication of this second kind in the meaning of democracy that we shall realise the limitations of such success as we have had with the system and cause of its later decline. Certainly, we have enshrined in our constitution excellent provisions like adult suffrage, an Election Commission so constituted as to ensure free elections, fundamental rights and the rest. It is also true that in actual operation of these we have been helped by the political experience and traditions of hundred years. But they have operated in the context of caste, communalism, linguism, illiteracy, poverty, corruption, the resort to the direct action and the absence of some of the elementary manners of democracy.

Speciality of Indian democracy

Of the many countries of Asia and Africa, formerly under colonial rule which adopted democratic constitutions of one kind or other when they attained independence at the end of the Second World War, India is practically the only major country where such a constitution has not been overturned and dictatorships, civilian or military, have not been established. Burma, Thailand, Ghana, Pakistan, Bangladesh and many others countries testify to it.

An independent Election Commission ensures the fair play in elections.

We accepted the principle of extending the norms of democracy to the area of effective local self-government introducing the *Panchayat-Raj* and we have also become an inspiration and a model for many other countries.

In democracies, and especially in democracies of developing areas like India, with her poverty and illiteracy, the political education of the ordinary citizen in the fundamental principles of the success of all democratic government becomes a matter of the first importance. Too often we think in terms only of literacy or education as such. Political education is something bigger and more important and more urgent.

Is India a federation ?

Traits of federation

Whether India has a federal form of government or unitary form of government is a disputed question. The obvious picture is

that India is a federation, because there is double government—one of the centre and another of the state—both deriving authority from the same source, namely the constitution.

The second federal feature is that the constitution of India is both written and rigid, though the rigour of rigidity is lesser than that of the constitution of the USA.

The Supreme Court of India is there to ensure the rights and powers of the states *vis-a-vis* the central government.

Traits of unitary character

But the coin has otherside. Article 3 of the constitution says that the geographical boundary of a state is at the mercy of the centre. If the centre wants, it can make three states out of one. Thus Assam has been now transformed into three states—Assam, Meghalaya and Nagaland. The state has no power to constitutionally challenge this. This is a serious drawback of the states in India *vis-a-vis* the union.

Secondly, the centre is more powerful than the states inasmuch as the centre can dissolve the government of a state and rule over it in the name of the President's rule. In this matter the state government is helpless.

Thirdly, the centre can make laws for the states, if two-thirds of the members of the *Rajya Sabha* take a resolution for it.

Fourthly, Dr. Durga Das Basu rightly said that "the emergency provisions of our constitution enable the federal government to acquire the strength of a unitary system whenever the exigencies of situation so demand." In India a person living in Punjab is not a citizen of both Punjab and India. He is a citizen of India alone. The concept of double citizenship which is another characteristic of a federation is unknown to the Indian constitution.

A mixture of federal and unitary character

Thus our constitution is neither a federal nor a unitary form. It is both. It is federal in structure but unitary in spirit. Dr. G.N. Joshi rightly said: "The constitution of India has a federal structure but the structure is so tight that it is at the same time unitary." It may be called quasi-federal and quasi-unitary. According to Mr. M.C. Chagla, "even members of the legislature are settled in the capital (Delhi). Federalism is observed more in the breach than the observance and for all practical purposes India is a 'unitary government'.

The constitution of India is a truly federal state with a very dominant and strong central government and a dominant parliament."

To begin with, the constitution in Article 1 itself is described as a "union of states." The word "federation" appears nowhere in the constitution. In the division of powers between the centre and the state governments, the Union List (List 1) taken along with the Concurrent List (List 2) gives the union government very wide powers compared to those mentioned in the States List (List 3). When the central law and the state law in the same subject will conflict, the Union List will prevail. Moreover, the residuary power belongs to the union. Again, the provisions for different kinds of emergency in Part XVIII of the constitution also give enormous powers to the central government. This is particularly true of an emergency arising out of the failure of constitutional machinery in the states (Article 356), though in an emergency also arising out of a threat, external or internal, to the security of India or a part thereof (Article 352), as well as in a financial emergency (Article 360), the central government is armed with vast powers. The Emergency Provisions including Articles 352 to 360 also constitute a most important fetter by which the autonomy and constitutional governments of the states are limited. On the declaration of emergency, the entire legislative field of the union and the states becomes one, the parliament has by reason of Article 250 of the constitution the power to make laws for the whole or any part of the territory of India in respect of any matter enumerated in the State List. The executive power of the union also extends to the giving of directions to any state government as to the manner in which its executive power is to be exercised. Further, the President of the union appoints the Governors of the states; they are not appointed in any way by the states themselves.

Mention must be made without exhausting the list of central powers, also of Articles like 2 and 3 which empower the union legislature to admit into the union or establish new states, as well as to form new states and alter their areas, boundaries and names; only a reference of such a bill to the state concerned is required, not its consent.

Our constitution embodies the constitution both for the union of India as also for the states, unlike the American constitution which is concerned with the federal structure alone.

CHAPTER IV

FUNDAMENTAL RIGHTS

A fundamental right is a legally enforceable right governing the relation between the state and the individual.

—Late Justice Dr. P.B. Gajendragadkar.
(Former Chief Justice of India)

Fundamental rights occupy a unique place in the lives of civilised societies and have been variously described in judgments of the Supreme Court as “transcendental”, “inalienable” and “primordial”. For us, they constitute the ark of the constitution.

—Justice Y.V. Chandrachud in
Minerva Mills Ltd. v. Union of India,
AIR 1980 SC 1789

The fundamental rights are not mere paper hopes. They are constitutional guarantees to the Indian people.

—Justice V.R. Krishna Iyer
(Former Judge, Supreme Court of India)

FUNDAMENTAL RIGHTS

The genesis of the fundamental rights

The executive or the legislature may do some harms to the citizens. So, it is necessary to write down in clear language in the constitution all the various minimum rights which every citizen has the power to enjoy in the country. These rights are called the fundamental rights. So, the fundamental rights are those rights which are written in Part III of the constitution and which cannot be destroyed or denied by the government or any authority.

The fundamental rights occupy an important place in shaping Indian democracy. Liberty is the rock-bottom of democracy. Political liberty is not enough in a true democracy just to choose the representatives who are to make laws for the country. Men need at the same time some civil liberties as well so that they can live without any harassment or interference by other persons or the government. To meet this need, the drafters of the constitution have assigned in the entire Part III of the constitution some rights which are described as the fundamental rights. Such rights are also to be found in the American constitution. In the constitution of Australia such rights are called the "basic rights".

Six kinds of fundamental rights

In the constitution of India a citizen has the following six kinds of fundamental rights:—

- (1) Right to equality.
- (2) Right to freedom.
- (3) Right against exploitation.
- (4) Right to freedom of religion.
- (5) Right to culture and education of minorities.
- (6) Right to constitutional remedies.

FUNDAMENTAL RIGHTS

Right to Equality

1. Equality before law and equal protection before law [Art. 14.]
2. Prohibition of discrimination on grounds of religion etc [Art. 15].
3. Equality of opportunity in employment [Art. 16].
4. Abolition of untouchability [Art. 17].
5. Abolition of titles [Art. 18].

Right to Particular Freedom

1. Freedom of speech and expression ; assembly ; association ; movement ; residence and settlement ; profession [Art. 19].
2. Protection in respect of condition for offences [Art. 20].
3. Protection of life and personal liberty [Art. 21].
4. Protection against arrest and detention in certain cases [Art. 22].

Right against Exploitation

1. Prohibition of traffic in human beings and forced labour [Art. 25].
2. Prohibition of employment of children in hazardous employment [Art. 24].

Right to Freedom of Religion

1. Freedom of conscience and free profession [Art. 25].
2. Freedom to manage religious affairs [Art. 26].
3. Freedom as to payment of taxes for promotion of any particular religion [Art. 27].
4. Freedom as to attendance at religious instruction in certain educational institutions [Art. 28].

Cultural and Educational Rights of Minorities

1. Protection of language, script or culture of minorities [Art. 29.]
2. Right of minorities to establish and administer educational institutions [Art. 30].

Right to Constitutional Remedies

Remedies for enforcement of the fundamental rights conferred by this Part,—
writs of *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and *quo warranto* [Art. 32].

Let us now explain the six kinds of fundamental rights :—

(1) *Right to equality*—It includes equality before law, no difference on grounds of religion and abolition of untouchability etc.

(2) *Right to freedom*— It includes freedom of speech and expression, assembly, association and union movement, residence and profession.

(3) *Right against exploitation*—It includes prohibition of forced labour, prohibition of employment of children in risky works etc.

(4) *Right to freedom of religion* — It includes freedom to follow any religion, to attend religious sermons in certain schools and colleges. This is in line with “secularism” as ingrained in the preamble to the constitution. Every citizen is entitled to follow any religion he likes and the government will not interfere with it. But it does not mean that for the sake of religion a citizen can indulge in such actions which are horrifying and unreasonable. For example, a citizen will not be allowed to indulge in human sacrifice, burning the widow or killing the female child, though this might be a part of his religious practices.

(5) *Right to culture and education of minorities*—It includes protection of language and culture of any community, ethnic group etc.

(6) *Right to constitutional remedies* — It provides that if a citizen is deprived of any of the above five kinds of fundamental rights, he can move the Supreme Court of India and the Supreme Court must take action to protect his fundamental rights. When any of the fundamental rights is infringed or likely to be affected, a citizen can approach the Supreme Court under Article 32 of the constitution. This type of provision is not found in any constitution of the world that a citizen has been given not only some rights which are fundamental but also an additional right to go to the Supreme Court for the preservation of such rights. This feature distinguishes the Indian constitution from any constitution of the world. According to Mr. Y.V. Chandrachud, the Chief Justice of India in *Fertiliser Corporation's case* in 1981 “The jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the constitution, because it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement.”

These are the six kinds of fundamental rights that a citizen of India can enjoy under the present constitution.

It should be noted that although we need fundamental rights, such rights cannot be absolute. They are to be subjected to reasonable

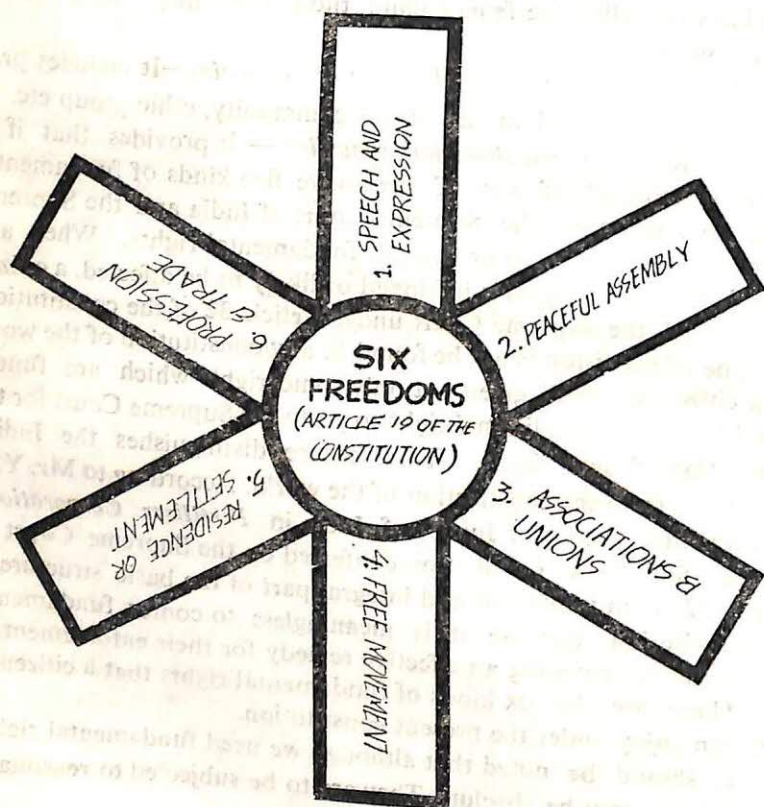
reastrictions. Otherwise, there will be utter chaos and confusions. Thus, what the constitution has provided is guarding the rights of each citizen by putting some restraints on the liberties of all other citizens.

Six freedoms

We have noticed that the constitution itself has divided the fundamental rights into six kinds. One of them is right to freedoms. Now this right to freedoms again consists of six types of freedoms which are popularly called "six freedoms". These freedoms are ingrained in Article 19 of the constitution. We may reproduce these six freedoms as :

"Article 19 (1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;



- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) (deleted by the 44th amendment of the constitution)
- (g) to practise any profession, or to carry on any occupation, trade or business."

Let us now explain in a bit detail the six freedoms enumerated above.

1. *Freedom of speech and expressions*—Decisions in a democratic society are arrived at after discussions, debates and talks in a negotiating table. Without freedom to express one's mind such decisions are not possible. It does not mean the freedom to speak only. It includes the freedom to write also. Such writings may be in books, in newspapers or wall posters or even handbills. But this freedom is not absolute. One cannot speak in intemperate language or incite people in inflammatory speech. Similarly, one cannot write obscene matters that would lower the morale of the readers. Likewise, the editor of a newspaper cannot write objectionable matter that may incite communal hatred or linguistic chauvinism. To say in the words of Lord Denning : "An editor should stick to the bare bones of a story. If he puts the meat on the bones, then he must answer for the whole joint". Thus although the freedom of speech and expression is a fundamental right, it is to be exercised with due care.

2. *Freedom to assemble peacefully and without arms*—To hold meetings and form public opinion is one of the essential ingredients in a democratic process. But this right is subject to certain limitations. When an assembly of people threatens the breach of law and order, such a meeting can be banned by an order under section 144 of the Criminal Procedure Code of India.

3. *Freedom to form an association or union*—This right means and includes the right to organise various political, cultural, social or economic associations. Such associations or unions are necessary for the full development of the personality in a citizen. But the government may not permit persons to form union or association whose purpose is to sabotage the state machinery. Thus if the government feels that any of such associations is harmful to the interest of the country, the government can ban such an association. For example, the government has banned the Mizo National Front in Mizoram.

4. *Freedom of movement*—Every citizen has a right to travel

all over the country. But this right is also not absolute. When the government feels that certain tribal people should not be exploited, the government can, as a policy matter, restrict the entry of other people in such areas. So a permit is necessary to go to any part of the state of Nagaland or to the union territory of Arunachal Pradesh. Again, for security reasons a permit is necessary to enter any part of Jammu and Kashmir. Moreover, when the stay of a particular person in a particular area is threatened with the breach of law and order, the government can expel him from that area. In the cases mentioned above the constitutional shield of the freedom to travel anywhere in the country will be of no avail.

5. *Freedom to reside and settle in any part of the territory of India*—Every citizen whether he is a Punjabi or Rajasthani has a constitutional right to reside or settle in any part of India, say West Bengal or Assam or Tamil Nadu. Without this freedom the integrity of the country is impossible.

6. *Freedom to practise any profession*—This means that a citizen cannot be prohibited from becoming a doctor or engineer or he cannot be compelled to take up any profession other than the one he himself selects. This, however, does not mean that a citizen can take to ugly profession like blackmarketing, smuggling or prostitution. The government has power to declare the ugly professions mentioned above as illegal.

CHAPTER V

CITIZENS AND THEIR FUNDAMENTAL DUTIES

Ask not what your country can do for you, but what you can do for your country.

—John Kennedy

(Former President of the United States of America)

The fundamental duties that have been included in our constitution are such as should be acceptable to every citizen.

—Late H.R. Goakhle

(Former Law Minister of India)

For the first time, a chapter on fundamental duties was introduced in order to counteract the sweep of the fundamental rights. Even though no sanction has been appended to these duties, it is obvious that if a court takes these duties into consideration along with the fundamental rights, the scope of the free play of these rights would, to that extent, be narrowed down.

—Dr. Durga Das Basu

(Former Judge of Calcutta High Court
and constitutional commentator)

CITIZENS AND THEIR FUNDAMENTAL DUTIES

Citizenship

According to the Oxford English Dictionary a citizen is "a person, native or naturalised, who has full rights in a state". A person can be a citizen of a country by birth or he can acquire citizenship by naturalisation. Naturalisation is a process in which a formal application for citizenship and also a period of residence in the country whose citizenship he is going to acquire is necessary.

A person born in India has a right to be a citizen of India, though his parents are not Indian nationals. Likewise, any person born outside India whose father is an Indian citizen will also be a citizen of India. In that case what is necessary is that his birth is to be registered at an Indian diplomatic mission before the child is one year-old.

Citizenship of India can also be acquired by registration which is the other name for naturalisation. An American lady who becomes the lawful wife of an India citizen will get Indian citizenship by virtue of her marriage to an Indian citizen. What she has to do is that she has to apply for Indian citizenship.

Acquisition of citizenship by naturalisation is thus a little more difficult than acquiring citizenship by births. Thus a foreign national willing to become a citizen of India will be required to fulfil the following conditions:—

- (1) He should give up the citizenship of the country to which he belongs;
- (2) He should be conversant with any Indian language;
- (3) He should have resided in India for more than seven months;
- (4) He should have the intention of staying in India.

From this it does not follow that any body fulfilling the above conditions will be granted Indian citizenship. As the citizenship is a very valuable privilege, the government of India will grant it only to those persons who are of good character. On the other hand, the government of India may grant citizenship to any person who has rendered distinguished services to the cause of science, art or literature, when the government will not insist on any of the conditions listed above. For example, J.B.S. Haldane, a scientist of international repute who was a British citizen was granted Indian citizenship in 1958 and he worked and stayed in India until his death in 1964.

The constitution of India provides for a single and uniform citizenship for the whole of India. Every person who was on 26 January 1950 domiciled in India and was born in India or either of whose parents was born in India or who had been ordinarily resident in the territory of India for not less than 5 years became a citizen of India. The constitution made special provisions for migrants from Pakistan and persons of Indian origin residing outside India. In 1955 a full-fledged Act known as the Indian Citizenship Act came into being to supplement the provisions of the constitution. This Act provided for the acquisition of citizenship by birth, descent, registration, naturalisation and incorporation of territory. The Act also provides for loss of citizenship by renunciation, termination and deprivation.

Fundamental duties of citizens

We should remember that rights and duties are co-related. One is essential to another. Thus the fundamental rights of the citizens will be meaningless, if they are not under some obligations to discharge some fundamental duties. For that purpose by an amendment of the constitution in 1976 a new Article namely Article 51A has been inserted, and for the first time the citizens are enjoined with some responsibilities or duties called the fundamental duties. They are ten in number. They are :

1. Every citizen will follow the law laid down in the constitution. He should respect the national flag and national anthem.
2. The spirit of national struggle by which India attained her independence should be a source of inspiration for every citizen.
3. It is the bounden duty of every citizen to uphold and protect the sovereignty, unity and integrity of the country.
4. During war a citizen should be prepared to join the army and to protect his country from foreign invasion.

5. A citizen is required to promote harmony and the spirit of good brotherhood among the people of India speaking different languages and professing different religious faiths. It is also his essential duty to protect the dignity of women.

6. A citizen is under an obligation to respect and preserve the rich heritage of Indian culture.

7. Protection and improvement of forests, rivers and wild life are his other duties.

8. A citizen will have a scientific and critical approach to all problems.

9. To protect public property and to eschew violence are also his duties.

10. A citizen should individually and collectively strive for the betterment of the country and for more and more achievements for India.

Let us now elucidate these fundamental duties.

Loyalty to the country is the prime duty of a citizen. It is the bounden duty of a citizen to preserve the integrity and independence of the country. He will rise above narrow linguistic and communal chauvanism. He should keep in mind that many patriots in India died to make the country independent and free from the hands of the British.

There can be no better work for a citizen than to defend his country at the time of foreign invasion. Such incidents took place in 1962 when China invaded India and in 1965 and 1971 when Pakistan invaded India.

In "the directive principles of state policy" we shall notice that forests and wild life are to be protected. Now, every citizen is asked to consider it his duty. This is essential, because otherwise there will be no fresh air or fresh water.

It is a pity that during riots and disturbances people put trams and buses in fire. But the trams and buses are national property. It is now pinned on the shoulder of the citizens to protect public property. It is at the same time a duty of a citizen not to indulge in violent activities when the wrong-doers take law in their own hands. A good citizen will always abjure violence.

It is the duty of a citizen to develop his intellectual faculty with a scientific and reasoned judgment. Education of a citizen does not cease with his leaving the college or the university. This should continue throughout his life. The more intellectual attainment a

citizen will make for himself, the more will be the advancement of the country.

Some East European countries have set out some duties in their constitution. The fundamental duties that have been included in our constitution are such as should be acceptable to every citizen. These duties are acceptable, because they are non-partisan in character and should have a general appeal to all citizens. Many of them have some moral and social values. It is hoped that the educational curriculum should include the teaching of these duties at all levels.

India has a variety of linguistic and religious groups but all these diverse peoples, whatever their caste or creed, are citizens of India, and all have their part to play to preserve India as a great nation.

In fine, every citizen is under an obligation to obey the law, preserve public order, respect social ethics, safeguard public property, pay taxes, defend the homeland and perform military service. A citizen should be well-informed through the newspapers. If he has no thorough knowledge or understanding of national and international affairs, democracy will be a mockery. It is not enough for a citizen to scan the newspapers or understand the subject matter. He must be capable to distinguish truth from falsehood. He should also hear the point of view of the opposition and then only it will be possible for him to come to the right conclusion.

Other duties of a citizen

Right to vote is a priceless gift of a citizen in a democracy. However, democracy does not compel everyone to vote. But democracy will be meaningless, if persons who have rights and privileges fail to exercise these rights and privileges. A good citizen will take pain to get himself registered as a voter. Not only that. On the election day he will take the trouble of going to the polling centre and also of casting his vote. But this is not the only duty of a good citizen. In a democracy a citizen's function does not end with casting his vote. His duty will be to create the right atmosphere to enable the government to smoothly and effectively function. We find on the part of even educated public a shocking disregard for civil obligations. A person may keep his own house clean enough but will have no compunction in throwing all the refuse in the street outside. When a school or college is situated by the side of a filthy, disease-bearing

open drain, nobody even lodges a complaint to the civil authorities not to speak of raising his individual or collective finger to clean it up. We will find people leaving the lights burning in offices at mid-day, the fans going at full speed in empty rooms, and the municipal taps running even when there is great scarcity of water. It is the duty of a citizen to do the other way round.

CHAPTER VI

DIRECTIVE PRINCIPLES OF STATE POLICY

The directive principles of state policy enact the constitutional goals.

—Justice D.A. Desai
(Judge, Supreme Court of India)

The directive principles of state policy (Part IV of the constitution) and the fundamental rights (Part III) are complementary to each other and the question of primacy of one over the other is a judicial discovery.

—Justice V.R. Krishna Iyer
(Former Judge of the Supreme Court of India)

After the 42nd Amendment Act, 1976 if a law is made to give effect to any of the directives contained in Part IV, it will be immune from unconstitutionality, even though it contravenes the fundamental rights in Articles 14 and 19.

—Dr. Durga Das Basu
(Former Judge of Calcutta High Court
and constitutional commentator)

(13) To separate judiciary from the executive so that justice will be free from corruption.

(14) To promote the peace of the world.

By an amendment (Constitution Forty-fourth Amendment Act of 1978) a new item has been added which directs the state to protect and improve the environment and to preserve the forest and wild life of the country. Its main object is to make available fresh air and water to the people.

DIRECTIVE PRINCIPLES OF STATE POLICY

Directive principles of the state policy are the directions and instructions to the executive and legislative bodies of the country to follow them in order to realise the very aim of the constitution. The duty of the legislature should be to follow those principles and the duty of the executive will be to remember those principles while doing their duties.

Let us now examine the directive principles as laid down in the constitution. Articles 37 to 51 deal with the various directive principles of state policy. They are :—

- (1) To promote the welfare of the people and to give social, economic and political justice.
- (2) To give adequate means of livelihood to every citizen.
- (3) To organise village-*panchayats*.
- (4) To give to the people the right to work and education.
- (5) To give good and reasonable conditions for work and to give medical help to the workers.
- (6) To give to the citizens a living income, decent standard of living and social and cultural opportunities.
- (7) To give to all citizens a uniform civil code.
- (8) To provide compulsory primary education within a period of 10 years from the commencement of the constitution for all children up to the age of 14.
- (9) To promote the conditions of the Shcheduled Castes and Scheduled Tribes and to save them from any injustice.
- (10) To promote the public health.
- (11) To organise agriculture and to stop killing cows and other milk-giving animals.
- (12) To protect every monument or place of art and historic importance.

(13) To separate judiciary from the executive so that justice will be free from corruption.

(14) To promote the peace of the world.

By an amendment (Constitution Forty-fourth Amendment Act of 1976) a new item has been added which directs the state to protect and improve the environment and to preserve the forest and wild life of the country. Its main object is to make available fresh air and unpolluted water to the people.

Both the union government and the state governments have tried to follow the directive principles. For example we may say that the abolition of untouchability and the abolition of the zamindari system are in accordance with the directive principles. Again, the various five year plans in india have been mainly concerned with raising the living standard and the abolition of poverty. The union government and the state governments are implementing the directives by promoting the educational and economic interests of the Scheduled Castes and Scheduled Tribes by reserving jobs in the government services and by reserving seats in educational institutes for them. But one thing to be noted is that the directives and the scheduled principles are not clear and so may be differently explained. Again, if the principles are not followed by the government or any authority, law cannot do anything. This is a vital difference between the fundamental rights and directive principles of the state policy.

Most of the directive principles have socialistic approach such as equal pay for equal work for both men and women, congenial conditions for work and the protection of children and youth from exploitation. The economic goals aimed at are the organisation of agriculture and animal husbandry on a modernised and scientific basis, the promotion of cottage industries and making available job opportunities to the unemployed youths.

The interests of the individual can serve only if the interests of the society are subserved. If the society itself perishes, where will be the individuals? It is important that the rights of individuals should be protected. But they must be subservient to the rights of the society. That is how the so-called conflict between the directive principles and the fundamental rights arises. Broadly speaking, we can say that the directive principles are principles for promoting the interests of the society and to that extent to which they come in conflicts with the rights of the individuals, they must have precedence.

CHAPTER VII

GOVERNMENT OF THE UNION

The President of India is only a constitutional head and in the discharge of his duties of the state he is bound to accept the advice tendered by the Prime Minister.

—Late V. V. Giri
(Former President of India)

The President's position is that of a constitutional president. The ministers are, of course, responsible to the legislature and tender advice to the President who is bound to act according to that advice.

—Late Dr. Rajendra Prasad
(Former President of India)

The provisions of the constitution do not leave any discretion to the President to act independently of the advice of the council of ministers, except in two matters: (1) the choice of the Prime Minister and (2) when the government of the Indian union cannot be carried on in accordance with the constitution.

—Dr. A. Appadorai
(Former President of Indian School of
International Studies, New Delhi)

GOVERNMENT OF THE UNION

The President

Like England, India has a parliamentary form of government. As in England the king or queen is the formal head of the executive, so also the President in India. So the position of the President of India is like that of the king or queen of England.

(a) *Qualifications for election*—A person to be elected the President of India must have the following qualifications:—(i) He must be a citizen of India, (ii) must be at least 35 years of age, (iii) must have qualifications for election to the house of the people, and (iv) must not hold any office of profit.

The President is administered the following oath by the Chief Justice of India

I.....do swear in the name of God (or solemnly affirm) that I will faithfully execute the office of President of India and will to the best of my ability preserve, protect and defend the constitution and the law and that I will devote myself to the service and well-being of the people of India.

GOVERNMENT OF THE UNION

President

(Executive)
Council of Ministers¹

(Legislature)
Parliament

Council of States
(*Rajya Sabha*)

Not more than 250² members

12 nominated
by President

Not more than 238²
representatives of States
and Union Territories

Not more than 525
representatives of States
(plus not more than 2
nominated Anglo-Indians)

House of the People (*Lok Sabha*)

Not more than 547³ members

Not more than 20
representatives of
Union Territories

1. In 1977-78, there were in the Council of Ministers—

(a) 20 Ministers of the Cabinet, including the Prime Minister;
(b) 24 Ministers of State.

2. In October, 1977, the actual number of Members of the Council of States was 244, of whom 232 were representatives of the States and Union Territories, and 12 nominated by the President.

3. In September, 1977, after the fifth general election, the actual number of Members of the house of the people was 544, consisting of 525 representatives of states (including 6 from Jammu and Kashmir).

17 representatives of Union Territories of Delhi; Pondicherry, Chandigarh; Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli; Goa, Daman and Diu; Arunachal Pradesh; Mizoram.

2 nominated Anglo-Indians (for a population of 1,40,000).

(b) *Election*—The President is not directly elected by the people. He is elected by both the houses of parliament and all the state legislatures in accordance with the system of proportional representation by single transferable vote.*

*Each elected member of a state legislative assembly will have as many votes as there are the multiples of one thousand in the quotient by dividing the population of the state (on the basis of the last census report) by the total number of the elected members of the assembly. In other words, the population of a state should be divided by the total number of the elected members of the legislative assembly of that state and the quotient to be further divided by 1,000 and the figure of 1 to be added to the second quotient, in case the remainder is more than 500. We may take up the formula as :

$$\text{Total member of votes of an elected MLA} = \frac{\text{Population of the state}}{\text{Total Number of elected MLAs}} \div 1,000$$

Let us presume that in the state there is a population of 5,000,000 and that there are 50 elected members in the legislative assembly. In that case the votes of each member shall be :
 $5,000,000 \div 50 = 100,000 \div 1,000 = 100$

Similarly, each elected member of the parliament shall have such number of votes as may be secured by dividing that total number of votes assigned to all the elected members of the legislative assemblies of the country by the total number of elected members of the parliament. In other words, it means that the total number of the votes of all elected members of the legislative assemblies of the country should be divided by the total number of elected members of the parliament and the figure of 1 be added to the quotient in case the remainder is more than half of the total strength of the elected members of parliament. We may take up the formula as under :

$$\text{Total number of votes of an elected M.P.} = \frac{\text{Total number of votes of all elected M.L.As}}{\text{Total number of the elected members of parliament}}$$

Let us presume that the total number of votes of all the elected members of the legislative assemblies of the country is 2,000,000 and the total strength of the elected members of the parliament is 500, so the number of the votes of each elected member of the parliament will be 400.

(c) *Terms of office*—(i) The President holds office for a term of 5 years. (ii) The same person can be the President, according to a convention, only for two terms. (iii) He may leave his post by resignation. (iv) He may be removed by impeachment. He gets a salary of Rs. 10,000/- per month.

(d) *Powers and functions*—The President of India has various powers and functions. These powers can be divided into five classes—(1) executive, (ii) legislative (iii) judicial, (iv) military and (v) emergency powers.

(i) *Executive powers*—According to the constitution, the President is the head of the executive. So all the executive functions of the union government shall be in the name of the President. All the Governors of the states, the union council of ministers and all other high officers like the members of the Union Public Service Commission, Judges of the Supreme Court, Judges of the High Court are appointed by the President.

(ii) *Legislative powers*—The President is not a member of the parliament, but he is a part of the parliament. The parliament of India consists of three parts—the house of the people, the council of states and the President. So, it is clear that the President of India has got great legislative powers and functions. No bill passed by the parliament can become an Act without the assent of the President. The President may or may not give his assent. Again, no money bill can even be introduced in the parliament without the prior permission of the President. Moreover, the President can summon and dissolve the parliament. Again, the President can make ordinances which will have the same force as Acts of the parliament. So, it is clear that the President has vital legislative functions in the country.

(iii) *Judicial powers*—The great judicial power of the President is very clear from the fact that the President appoints the highest judicial officers like the Judges of the Supreme Court, the Judges of the High Court and Attorney-General of India. Again, the President himself acts as the Judge which is clear from the fact that he can grant pardon and relax sentences of any crime.

(iv) *Military powers*—The President is the commander of the Indian army, navy and air forces. All the high military officers are appointed by the President. So, the President is the head of the military power of the country.

(v) *Diplomatic powers*—The President has some diplomatic functions. The President makes all appointments of the ambassadors of India in other countries of the world. He also receives ambassadors of other countries.

(vi) *Emergency powers*—Normally the President exercises the powers discussed above. But in abnormal cases or in emergency the President has emergency powers. The emergency powers are of three kinds—(a) emergency because of internal or external disturbance, (b) emergency because of the breakdown of the constitutional machinery in any state. This happened in many states. Example may be given of the state of Kerala in March, 1982 when the President dismissed the Karunakaran ministry and declared President's rule, (c) financial emergency.—by this power the President can reduce the salaries of the government servants to get the necessary money to meet the financial crisis.

Constitutional Position of the President

The President's position is like that of the queen of England. Only difference is that the President has the emergency powers when he can ignore the parliament. But in England the parliament is all-in-all in normal as well as in abnormal situations. The President is the supreme executive authority of India. He is the head of the state. The head of the state need not be confused with the head of the government. While the President is the head of the state, the Prime Minister is the head of the government.

Presidents of India

1. Dr. Rajendra Prasad (12 May 1952—12 May 1957)
2. Dr. Rajendra Prasad (second term) (13 May 1957—12 May 1962)
3. Dr. S. Radhakrishnan (13 May 1962—12 May 1967)
4. Dr. Zakir Hussain (12 May 1967—3 May 1969)
5. Mr. V.V. Giri (3 May 1969—20 July 1969) *Acting*.
6. Mr. M. Hidayatullah (20 July 1969—24 August 1969) *Acting*.
7. Mr. V.V. Giri (24 August 1969—23 August 1974)
8. Mr. Fakhruddin Ali Ahmed (24 August 1974—11 February 1977)
9. Mr. B.D. Jatti (11 February 1977—24 July 1977) *Acting*.
10. Mr. N.S. Reddy (25 July 1977—.....)

As the head of the state the President is a symbol of the unity of the nation. He is above party politics. The President as the head of the nation receives all the ambassadors and high commissioners who are sent to India and as a custom recognised all over the world. Every year the President opens the parliamentary session and reads out his speech that spells out the details of policies that will be followed by the government. He also mentions in his speech the new laws that will be enacted during the session of the parliament.

Every executive action or business of the government of India shall be done in the name of the President. The Prime Minister keeps the President informed of all proposals for legislation and also all cabinet decisions. The President, however, may call for more information and details. Although he can express his own opinion to the Prime Minister, he cannot override the decision of the Prime Minister.

The President as the head of the state pays official visits to various parts of India as a token of unity and oneness of the nation. He delivers speeches and opens buildings of public institutions like colleges, research institutions, cultural organisations etc. Outside the country also the President pays his official visits to various countries as a symbol of friendship with those countries.

The President confers various titles and badges of rank on the citizens like *Bharat Ratna*, *Param Vir Chakra*, etc.

The President is also the commander-in-chief of the armed forces of the country. The President has the power of pardoning a person convicted in a criminal court or a military person convicted by a court martial or a military tribunal. In such matters the President is assisted by the law department of the government.

The President enjoys sovereign immunity by virtue of which he cannot be tried in any civil or criminal court of the country.

Impeachment of the President

Impeachment is a procedure by which the President of India can be removed from the post, if he is found guilty of violating the constitution. This is, however, a very difficult procedure. This procedure has not been applied any time in India. Any of the two houses of the parliament may initiate the proposal by a resolution supported by at least one-fourth of the members. If the resolution is passed by at least two-thirds of the members, it is sent back to the originating house for investigation. During such investigation the President has a right to be present and heard. After that, the resolution

is sent to the other house. If in that house also the resolution is passed by two-thirds majority, the President will be removed from the post.

THE PRESIDENT'S RELATION WITH THE COUNCIL OF MINISTERS

It is interesting to study the President's relation with the council of ministers. According to Article 74 of the constitution a council of ministers will aid and advise the President in his functions. This council of ministers is headed by the Prime Minister. According to Article 75 of the constitution, the President appoints the Prime Minister and all other ministers recommended by the Prime Minister. But the function of the President in this matter is most formal. As a matter of fact, the majority party in the parliament selects their leader who becomes the Prime Minister. And the President simply approves of it. Similarly, the Prime Minister selects and appoints his other ministers and the President simply approves of it. Again, according to the constitution the President can dismiss any minister and even the Prime Minister. But in practice, the fate of the Prime Minister and his cabinet depends upon the likes and dislikes of the parliament. If the parliament express its non-confidence in the Prime Minister or the council of ministers, the Prime Minister will resign. And together with the Prime Minister all other ministers will also resign. So, the President has got nothing to do with the dismissal of the ministers. The President simply accepts their resignation.

So, it is clear that the powers and functions of the President in relation to the council of ministers are very formal. He simply agrees to what the council of ministers or the parliament does. He has no hand in politics. The Prime Minister goes to the President every now and then to keep the President informed of all the matters of the council of ministers. This is necessary, because the President cannot attend the cabinet meetings. So, the Prime Minister is the link between the President and the council of ministers.

Some opinions about the constitutional position of the President

According to Mr. Asoke K. Sen : "The union government is represented by the President of India who functions on the advice of his council of ministers. The constitution sets up the office of the President as an elective office and vests the entire executive power of the union in the President. The President has to function on the advice of the council of ministers who are collectively responsible to the house of the

nation receives all the ambassadors and high commissioners who are sent to India and as a custom recognised all over the world. Every year the President opens the parliamentary session and reads out his speech that spells out the details of policies that will be followed by the government. He also mentions in his speech the new laws that will be enacted during the session of the parliament.

Every executive action or business of the government of India shall be done in the name of the President. The Prime Minister keeps the President informed of all proposals for legislation and also all cabinet decisions. The President, however, may call for more information and details. Although he can express his own opinion to the Prime Minister, he cannot override the decision of the Prime Minister.

The President as the head of the state pays official visits to various parts of India as a token of unity and oneness of the nation. He delivers speeches and opens buildings of public institutions like colleges, research institutions, cultural organisations etc. Outside the country also the President pays his official visits to various countries as a symbol of friendship with those countries.

The President confers various titles and badges of rank on the citizens like *Bharat Ratna*, *Param Vir Chakra*, etc.

The President is also the commander-in-chief of the armed forces of the country. The President has the power of pardoning a person convicted in a criminal court or a military person convicted by a court martial or a military tribunal. In such matters the President is assisted by the law department of the government.

The President enjoys sovereign immunity by virtue of which he cannot be tried in any civil or criminal court of the country.

Impeachment of the President

Impeachment is a procedure by which the President of India can be removed from the post, if he is found guilty of violating the constitution. This is, however, a very difficult procedure. This procedure has not been applied any time in India. Any of the two houses of the parliament may initiate the proposal by a resolution supported by at least one-fourth of the members. If the resolution is passed by at least two-thirds of the members, it is sent back to the originating house for investigation. During such investigation the President has a right to be present and heard. After that, the resolution

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people. Our President is only the constitutional head of the central government unlike the President of the United States. Though he acts in law in his own name in discharging the executive functions of the union government, his functions are, in fact, distributed between and discharged by his ministers according to the rules of business framed by the President."

The supremacy of the Prime Minister or the council of ministers over the President is well-settled. This is clearly recognised in our constitution, though in the initial stage, some controversy arose out of it. Theoretically all ministers are appointed by the President. But in practice the ministers are all nominees of the Prime Minister. In this regard the practice is the same as in England. As Dr. Rafiq Zakaria observes in this regard: "Neither the founding fathers intended otherwise nor does the whole intricate fabric of our constitution allow any deviation from this well-settled fact."

About the constitutional position of the President the late President V. V. Giri observed: "The founding fathers of the constitution had made it abundantly clear that the President of India was only constitutional head and, in the discharge of his duties of state, he was bound to accept the advice tendered by the Prime Minister and her cabinet. Therefore, like any of my three distinguished predecessors, in this august office, I always had to concur with the decisions of the Prime Minister and her cabinet. When the constitution is so clearly defined, how can the President question the decision of the cabinet, since its members happen to be responsible to the parliament and to the people of India?"

But there was an otherwise contention at the beginning. Dr. Rajendra Prasad, the first President tried initially to assert himself but he was advised by Mr. M.C. Setalvad, the then Attorney-General that all executive authority in law and in fact was vested in the Prime Minister about all kinds of legislative and administrative actions. The same was the view of Sir Aladi Krishnaswami Iyer, the renowned jurist.

In 1969 Mrs. Indira Gandhi wanted that the President should be chosen by the Prime Minister. According to Sir Ivor Jennings, this would be a hazardous experiment. All doubts about the position of the President were set at rest by the famous decision of the Supreme Court in *Shamsher Singh's case* (decided on 23 August 1974) where it was emphatically stated that "The pleasure" of the President is nothing but the "pleasure" of the minister concerned. Thus the Supreme

Court after 24 years made clear what was hazy in the debates of the Constituent Assembly, where a member very rightly had observed: "So the name of the President is merely a misnomer. It is to be adopted because perhaps we have no other alternative and because we are not prepared to call the head of the state by the name of king."

Mr. H.R. Gokhale has nicely put this in a nutshell: "Our founding fathers always proceeded on the legitimate assumption that the President was bound to act on the advice of the council of ministers. On some occasions a doubt was raised, but it was soon resolved in favour of the view that the President is a constitutional head. Moreover, that is also the view taken by the courts. Thus our founding fathers never wanted the President to rule; they intended that like the British queen he should only reign. Thus the President of India is like the queen of England, of course without a throne or a crown.

The Vice-President of India

The qualifications of a person to be elected the Vice-President of India—his powers and functions.

In point of dignified position, the Vice-President is next to the President in the country.

Vice-Presidents of India

Dr S. Radhakrishnan	1952-62
Dr Zakir Hussain	1962-67
V.V. Giri	1967-3 May 1969
G.S. Pathak	31 August 1969-31 August 1974
B.D. Jatti	1974-31 August 1979
M. Hidayatullah	31 August 1979—

(a) *Qualifications for election*—To become the Vice-President of India a person must have the following qualifications :—

- (i) He must be a citizen of India.
- (ii) He must be at least 35 years of age.
- (iii) He must have the qualification for election as a member to the council of states. (*Rajya Sabha*).

(iv) He must not hold any office of profit.

(b) *Election*—The Vice-President is elected by both the houses of parliament in a joint meeting.

(c) *Term of office* (i) He will be the Vice-President for 5 years.

(ii) May leave his post by resignation.

(iii) May be removed by the opinion of the majority in the council of states, which must be approved of by the house of the people.

(d) *Powers and functions*—The Vice-President has no function. Only when the President's post is vacant (for illness, death, resignation, removal or absence from the country) the Vice-President acts for the President and in that case he has all powers and functions of the President.

Otherwise, his function is only to preside over the council of states. He is the "ex-officio" chairman of the council of states. The post of the Vice-President in itself has no salary. He gets his salary of Rs. 2250/- per month as the chairman of the council of states. But when the Vice-President acts for the President, he gets the salary of the President i.e. Rs. 10,000/- per month.

Thus the post the Vice-President is only nice and dignified. He is an empty soap-case which looks very beautiful, but has no function without the soap.

Oath administered to the Vice-President of India

I.....swear in the name of God or solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.

Office of the President and the Vice-President compared

<i>President</i>	<i>Vice-President</i>
(A) <i>Election</i> —elected by (i) both the houses of parliament and the legislative assemblies of all the states.	Elected by both the houses of parliament assembled at a joint meeting.

Both elections are in accordance with the system of proportional representation by single transferable vote.

(B) *Qualification for election—*

(i) Must be qualified for election to the house of the people.

(i) Must be qualified for election to the council of states.

Both (ii) must be a citizen of India, (iii) must be at least 35 of years age, (iv) must not hold any office of profit.

(C) *Terms of office—*(i) May resign by writing addressed to the Vice-President.

(i) May resign by writing addressed to the President.

(ii) May be removed by the process of impeachment.

(ii) May be removed by a resolution passed by the majority in the council of states and approved of by the house of the people.

(iii) May be elected for two terms only. (it is a convention)

(iii) May be elected for any number of times.

(D) *Salary—*Rs. 10,000/- per month.

Rs. 2,250/- per month. But when he acts as the President, he gets the salary of the President, i.e. Rs. 10,000/- per month.

(E) *Functions—*The executive power of the union is vested in the President and he exercises it on the advice of the council of ministers.

Has no function as the Vice-President. But when the post of the President is vacant (for illness, death, resignation, removal or absence from the country), the Vice-President acts as the President.

Otherwise he is the *ex-officio* chairman of the council of states.

CHAPTER VIII

THE PRIME MINISTER AND THE COUNCIL OF MINISTERS

The Prime Minister is the Prime Minister. He can lay down the policy of the government . in the constitution ; the Prime Minister is the linch-pin of government. To say that the Prime Minister cannot make a statement is a monstrous statement itself.

—Jawaharlal Nehru

The supremacy of the Prime Minister has been recognised in our constitution right from its enactment.

—Dr. Rafiq Zakaria
(Politician and journalist)

The cabinet is the hyphen which joins and the buckle which fastens the legislative part to the executive part.

—Late Walter Bagehot
(Eminent English political analyst)

THE PRIME MINISTER AND THE COUNCIL OF MINISTERS

The Prime Minister

The powers and functions of the Prime Minister of India

The position of the Prime Minister of India is like that of the Prime Minister of England. The Prime Minister of India is the real head of the union government. The majority party in the parliament select their leader and that leader becomes the Prime Minister. So, the Prime Minister is the leader in the parliament and as such he has great legislative powers and functions. In fact, he participates in debates on behalf of the government and helps other ministers when questioned by the opposition members.

Oath of office and secrecy administered to a Minister for the union.

1. Oath of office : I do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a minister for the union and that I will do right to all manner of people in accordance with the constitution and the law, without fear or favour, affection or ill-will.

2. Oath of secrecy : I do swear in the name of God (or solemnly affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as a minister for the union except as may be required for the due discharge of my duties as such minister.

All the members of the council of ministers are selected by the Prime Minister. It depends upon his choice to select one and drop another. If any minister is disliked by the Prime Minister, he must go. Neither the President nor the parliament can stop the exit of a minister disliked by the Prime Minister alone.

It is said that the Prime Minister is "first among his equals". It is not true. In fact the Prime Minister is the sun when other ministers are little planets in the political sky of India. The Prime Minister dominates the whole scene. His influence is felt in all corners of the country and in all matters of day-to-day life of the government. The ministers are not his equals; they are his subordinates. They must carry out the orders and advice of the Prime Minister.

All said and done, the fact remains that the powers and functions of the Prime Minister depend not so much upon the words of the constitution, but upon his personality. If he is a man of towering personality, his powers and functions will obviously be more and all-pervading. As for example, we may say that our Present Prime Minister Mrs. Indira Gandhi has a great personality and her personal abilities give her all powers of the government. But this is not the case with regard to our former Prime Minister Mr. Lal Bahadur Shastri or Chaudhuri Charan Singh. It was very clear in connection with the formation of the new cabinet. Mrs. Indira Gandhi herself selects her colleagues; and it depended absolutely upon her likes and dislikes to select one and drop another. But Mr. Lal Bahadur Shastri in selecting his colleagues took the help of the Congress President.

Disputes about the powers of the Prime Minister

Ever since the coming of the constitution the question as to how powerful is the Prime Minister of India has been a vexed problem for the constitutional lawyers. The office of the Prime Minister in India and the parliament of India are to a large extent imitation of the West-minister model. So it is but natural for the experts to draw answers from the British counterparts. According to Lord Morly, the Prime Minister of England "is the key-stone of the cabinet arch". It is clear that the cabinet is collectively responsible to the parliament. The Prime Minister, according to Professor Bagehot, is the *Primus inter pares* i.e. first among his equals. Let us first of all find out the power equation between the Prime Minister and his cabinet—which of them is more powerful? The ministers

have considerable influence among their own group and general public. Theoretically, the other ministers are not subordinate to the Prime Minister and must be considered to be his equal. Collectively, all ministers constitute a monolithic unit before the parliament and the public. But other ministers do not have existence apart from the Prime Minister. If the Prime Minister does not want him, he has to resign. Sardar Vallabhbhai Patel who was the Deputy Prime Minister in the First Nehru Cabinet emphasised that the Prime Minister cannot override other ministers, because he is only first among his equals. But Nehru did not agree, and said, "Am I to be contrained in taking any action which I consider necessary? That surely is an impossible position for me or for any Prime Minister

UNION COUNCIL OF MINISTERS



elsewhere. If I am to continue as Prime Minister, I cannot have any freedom restricted and I must have a certain liberty of direction. Otherwise, it is better for me to retire". According to Nehru if the Prime Minister is to take the opinion of the cabinet, he would be a mere figurehead and this is opposed to the parliamentary government. After Sardar Patel's death there was hardly any dispute. When Mr. C.D. Deshmukh did not agree with the Prime Minister's view of creation of a bigger bilingual state for Bombay and criticised the Prime Minister for not consulting the cabinet and doing it in a "cavalier and unconstitutional manner," the former had to resign. The Prime Minister did nothing unconstitutional. According to Lord Home: "Every cabinet minister is in a sense the Prime Minister's agent—his assistant". Mr. T.T. Krishnamachari had also to quit the cabinet of Lal Bahadur Shastri. And lastly Mr. M.C. Chagla left the cabinet of Mrs. Indira Gandhi when he did not agree to the idea of regional language being used as the medium of instructions in India.

Personal factors in the powers of the Prime Minister

The right of the Prime Minister to choose his colleagues and distribute among them the portfolios is an essential feature of cabinet type government. Mr. Nehru exercised such power without any hindrance after Patel's death in 1950. Before this, Patel would assert his influence in the formation of the cabinet and would put in the cabinet some of his favourites. Mr. Lal Bahadur Shastri was much indebted to the syndicate of the Congress Party and so could not throw away the wishes of the syndicate. As for Mrs. Indira Gandhi, she would at the beginning heed the choice of the syndicate, but after 1967 general election when most of the 5 stalwarts in the syndicate were defeated, she was left without any obstacle. The overwhelming majority that she got in 1971 mid-term poll was a signal for her personal victory. About the power and position of the Prime Minister, Dr. Rafiz Zakaria rightly observed: "Apart from the constitutional sanction that the office of the Prime Minister has, it requires of its holders certain great qualities for the job to be carried out effectively and properly. The day any Prime Minister allows himself to be a tool in the hands of others, the whole political fabric of our republic will be destroyed." The Prime Minister of India is indeed powerful—but not more than the famous Prime Ministers of England like Lloyd George, Winston Churchill, Harold Wilson or Mr. Margaret Thatcher. The Prime Minister of India is also consider-

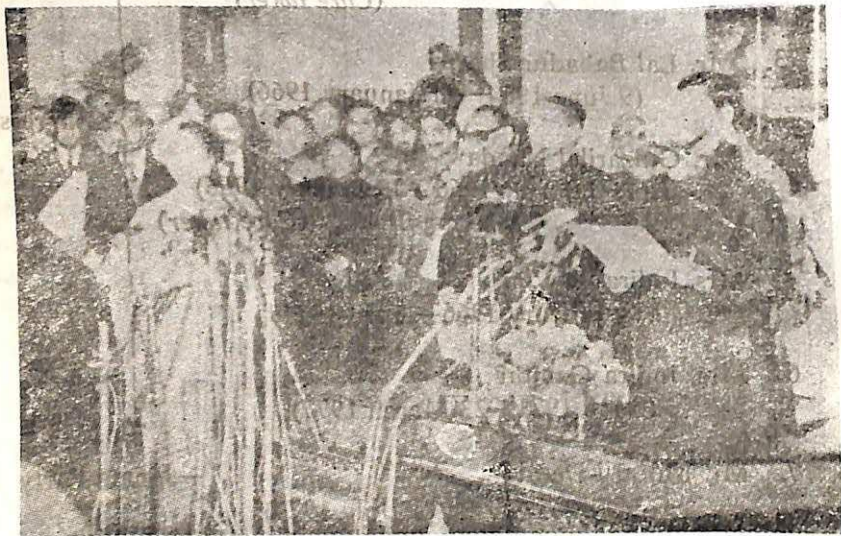
ably less powerful than the Presidents of France or the United States—General De Gaulle or Giscard d'Estaing, Franklin Roosevelt or Ronald Reagan.

Prime Ministers of India

- | | |
|---|---------------|
| 1. Mr. Jawaharlal Nehru
(26 January 1950—27 May 1964). | } Congress |
| 2. Mr. Gulzarilal Nanda
(27 May 1964—8 June 1964).
(<i>Care taker</i>) | |
| 3. Mr. Lal Bahadur Shastri
(9 June 1964—11 January 1966). | |
| 4. Mr. Gulzarilal Nanda
(11 January 1966—23 January 1966)
(<i>Care taker</i>) | |
| 5. Mrs. Indira Gandhi
(24 January 1966—April 1971) | |
| 6. Mrs. Indira Gandhi
(April 1971—23 March 1977) | |
| 7. Mr. Morarji Desai
(24 March 1977—27 July 1979) | —Janata Party |
| 8. Chaudhari Charan Singh
(28 July 1979—15 January 1980)
(Later on Lok Dal) | —Janata (S) |
| 9. Mrs. Indira Gandhi
(15 January 1980—) | —Congress (I) |

Other Diversified functions of the Prime Minister

The Prime Minister being the head of the union government holds a key position in the political life of the country. He has to preside over the cabinet and various committees of ministers in which all major decisions of the government are evolved. The President calls upon the Prime Minister to form his cabinet. All the Ministers are formally appointed by the President, but the real choice is of the Prime Minister. It may be necessary for the Prime Minister to make a change in the portfolios of the existing ministers or to drop some ministers or to induct some more persons in the cabinet. This is called cabinet reshuffle. There is no ceiling with regard to the maximum number of ministers. It all depends upon the Prime Minister.



The President administering the oath of office to Smt. Indira Gandhi at Rashtrapati Bhavan in New Delhi on 14 January 1980.

In a vast country like India the Prime Minister has an extraordinary task, because he has to see the diverse interests and at the same time national interests. He has to ensure "peace, order and good government". He has not only to make decisions on man and matter, but face the consequences of such decisions also.

Though there is a minister designated as the Minister for External Affairs, the Prime Minister actually makes all major decisions in

foreign affairs. This necessitates official tours by the Prime Minister to various countries of the world. He attends the meeting of the Prime Ministers of the Commonwealth countries. The Prime Minister as the "all-India personality" has to keep himself informed of the happenings of all parts of the country and this necessitates his personal visits to the nook and corner of the country. Every now and then the Prime Minister has to pay his visit to the universities, military bases, hospitals, diplomatic missions and cultural and social organisations as a necessary part of public life in a democracy.

The composition and functions of the Council of Ministers of the Union Government.

Composition of the Council of Ministers

Article 74 of the Constitution says that the council of ministers will aid and advise the President in his functions. From this it is clear that the council of ministers is very powerful. The council of ministers consists of all the ministers of the union government. The Prime Minister is the leader of the council of ministers. All the ministers are members of the parliament and are collectively responsible to the parliament and individually to the Prime Minister. The President only approves of it. Now, the Prime Minister selects other ministers from his party-members for different posts like the Law Minister, Home Minister, Defence Minister etc. The President simply approves of it. So, the council of ministers is formed from among the members of the parliament. If the parliament expresses its no-confidence in the council of ministers, the Prime Minister must resign. And when the Prime Minister resigns, all other ministers will also resign. So the fate of the council of ministers depends upon the parliament. Again, every minister is individually responsible to the Prime Minister. If the Prime Minister is dissatisfied with any minister, that minister must resign.

Another important thing is that there is no fixed number for the members of the council of ministers. It varies from time to time according to the needs and desires of the Prime Minister. Some times one minister works for two or three posts and some times the Prime Minister works for other posts in addition to the post of the Prime Minister.

Another thing is that although all ministers are members of the council of Ministers, there is a small inner body consisting of chosen

ministers, called the cabinet and these ministers are called cabinet ministers. The cabinet ministers are more dignified in position and salary than others known as ministers of state and deputy ministers. So, the council of ministers is divided into three classes—(i) Cabinet ministers. (ii) Ministers of state and (iii) Deputy ministers. The cabinet ministers attend the cabinet meetings and take part in important matters that are discussed in the cabinet. A minister of state is not allowed to attend the cabinet meetings. But in special cases he may be allowed for any particular occasion. A deputy minister helps the minister of his department and does not attend the cabinet meetings. The difference between the three classes of ministers is very clear in their salaries. The cabinet ministers get Rs. 2,250/- and an allowance of Rs. 500/- per month. The ministers of state get Rs. 2,250/- per month but not that extra allowance. The deputy ministers get Rs. 1750/- per month.

Functions of the Council of Ministers

The functions of the council of ministers are (i) executive and (ii) legislative.

(i) *Executive functions*—About the executive powers we must say that the main political switch-board of the country is the council of ministers. It is the council of ministers that makes the policy of the union government. Education, finance, food, defence which are the vital organs of the social and political life of the people are conducted by the council of ministers. This is the function of the council of ministers inside the country. But outside the country the council of ministers has also great functions. The relations of India with all countries of the world and all treaty-making powers are in the hands of the council of ministers.

(ii) *Legislative functions*—It is but natural that the council of ministers has legislative powers for the simple reason that the ministers are members of the parliament. All government bills are placed in the parliament by the Prime Minister or any minister; and all the ministers must support it. If a minister opposes other ministers or the Prime Minister in the process of legislation, the former must resign. So, although the parliament is the legislative body, the council of ministers actually pilots the legislation and gets the support of the parliament.

Each minister is advised and assisted in his work by the specialist; and experts in the department. Each minister in charge of a

department is answerable to the parliament for all works of his ministry and the whole cabinet is collectively responsible to the parliament.

The council of ministers has normally a life until the next general election. But the ministry will have to go, if a vote of no-confidence is approved of in the *Lok Sabha* or if a government bill is defeated in the *Lok Sabha*. The British convention which is followed in India is that in such an eventuality the council of ministers will tender its resignation.

The Cabinet Secretariat

The cabinet secretariat plays an important role in the process of decision making at the highest level. It functions under the direction of the Prime Minister. It is the duty of the cabinet secretariat to submit cases to the cabinet and its committees to prepare the records of decision taken and to see that these decisions are implemented. The cabinet secretariat formulates the rules of business and allocates the business of the government of India to the ministries and departments under the direction of the Prime Minister and with the consent of the President. It is the function of the cabinet secretariat to obtain and circulate to the President, the Vice-President, the council of ministers and other important functionaries periodical summaries and notes on important developments in each ministry.

CHAPTER IX

THE UNION LEGISLATURE

The sovereignty of the legislature and the independence of the judiciary, both functioning under the Indian constitution, constitute an essential ingredient of Indian democracy.

—Late Justice **P.B. Ganjendragadkar**
(Former Chief Justice of India)

In England the parliament is supreme. There is no limit or bar to the legislation which it may enact. On the other hand, the Indian parliament functioning under the written constitution of India is a legislature of limited powers.

—Late **M.C. Setalvad**
(Former Attorney-General of India)

While the parliament has the power to amend any part of the constitution, the power cannot be so exercised as to alter or destroy the basic structure being that of a free democracy.

—**N.A. Palkhivala**
(Constitutional lawyer and former
Indian ambassador in the USA)

9

THE UNION LEGISLATURE

What is Union Legislature ?

The moment we hear the word “parliament” the picture of an impressive building at once flashes in our mind. But the parliament does not stand for its bricks and stones. It is the pulse and life of human beings that make any institution including the parliament a success.

India is among the few countries in the developing world which have managed the Westminster style of government with remarkable success. To say in the words of Professor G.N. Joshi : “One feels that the future of parliamentary government and the democratic process in India is assured.”

The highest law-making body in India is the parliament. It consists of three bodies—the *Lok Sabha* (house of the people), the *Rajya Sabha* (council of states) and the President. Thus the President is a part of the parliament. So he is sometimes called the third house of the parliament. But when we talk of parliament, we do not mean that the President is included in it. We mean either of the two debating houses or both of them.

Oath administered to a member of Parliament

I.....having been elected (or nominated) a member of the House of the People (or Council of States) do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.

Who can be a member of the Parliament ?

Only a citizen of India can be a member of the parliament. In order to stand in the election for the *Lok Sabha* the candidate should have attained the age of twenty-five. For the *Rajya Sabha* the minimum age is thirty-five. A member of any of the houses is called an M.P. which stands for member of the parliament. One cannot be member of both the chambers. He has to vacate any of them. Similarly, he cannot be an M.P. and at the same time an M.L.A. or M.L.C. which stands for member of the legislative assembly and member of legislative council respectively. He has to choose only one. If he does not do so, he will be disqualified for membership of the parliament.

There are other disqualifications for membership of the parliament.

1. A person of unsound mind cannot be a member of the parliament.
2. Undischarged insolvent cannot be a member of the parliament.
3. Persons guilty of corrupt practices in the election are also disqualified.
4. A person convicted for any offence for which he was imprisoned for two years is also disqualified.
5. A person holding any office of profit is also disqualified.
6. A person will cease to be an M.P., if he adopts citizenship of a foreign country.
7. If a member becomes absent from the house for more than sixty days without permission, he will lose his membership of that house.

Duties of the Members of the Parliament

A member of the parliament is called upon to discharge several duties. He will support and follow the policy and programme of his own party all throughout. He will try to improve the locality from which he is elected, because he has been elected by the votes of the people of that area. He will listen to the grievances of the peoples of his constituency and bring these to the notice of the government. But he is also a member of the parliament which represents the whole country. So it shall be his duty to think in terms of the welfare of the whole country.

Composition of the Parliament

The parliament is organized according to the following schedule (figures show distribution of seats in March 1979).

	The Parliament	
	House of the People (Lok Sabha)	Council of States (Rajya Sabha)
<i>States :</i>		
Andhra Pradesh	42	18
Assam	14	7
Bihar	54	22
Gujarat	26	11
Haryana	10	5
Himachal Pradesh	4	3
Karnataka	28	12
Kerala	20	9
Madhya Pradesh	40	16
Maharashtra	48	19
Manipur	2	1
Meghalaya	2	1
Nagaland	1	1
Orissa	21	10
Punjab	13	7
Rajasthan	25	10
Sikkim	1	1
Tamil Nadu	39	18
Tripura	2	1
Uttar Pradesh	85	34
West Bengal	42	16
Jammu and Kashmir	6	4
<i>Union Territories :</i>		
Andaman and Nicobar Islands	1	—
Arunachal Pradesh	2	1
Chandigarh	1	—
Dadra and Nagar Haveli	1	—
Delhi	7	3
Goa, Daman and Diu	2	—
Lakshadweep	1	—
Mizoram	1	1
Pondicherry	1	1
<i>Nominated by the President under Article 80 (1) (a) of the Constitution</i>	—	12
Total¹	544	244

1. Includes 2 nominated members to represent the Anglo-Indians.

THE LOK SABHA

The composition and functions of the house of people

Composition of the Lok Sabha

The house of the people or *Lok Sabha* is the lower house of parliament. It is the main organ of law-making in India. The members of the house of the people are directly elected by the people. Any citizen of India who is at least 25 years of age, has the qualification for election as a member of the house of the people. Again, any citizen of India who is at least 21 years of age can vote in the election for the house of the people. There are at present 544 members in the house of the people, of whom 2 members are nominated by the President from among the Anglo-Indians. A member is elected to the house of the people from five lakhs of population. If any seat falls vacant because of the death or resignation of a member, the seat is filled in by a by-election. A member of the parliament gets Rs. 500/- per month. The house of the people has a life of 5 years. But it may be dissolved earlier by the President.

The house elects from among its members the Speaker and the Deputy Speaker who preside over the meetings of the house. The Speaker of the house of the people has functions like those of the Speaker of the house of commons in England. His function is to maintain law and order in the house. He does not vote in any matter. But when a matter requires one vote for decision the Speaker gives his casting vote. The Deputy Speaker has no functions. But only when the Speaker is absent or the post of the Speaker is vacant, the Deputy Speaker acts as the Speaker and has all the functions like the Speaker.

Functions of the Lok Sabha

The *Lok Sabha* has the following functions.

- (1) *Formation of the council of ministers and controlling it*—In a parliamentary system of government, the parliament forms the council of ministers. Every minister must be a member of either the house of the people or the council of states. But most of the ministers are generally selected from the house of the people. So, one important function of the house of the people is the making of ministry. Again, the house of the people controls the council of

ministers. If the house of the people has no confidence in the council of ministers, all the ministers must resign. Then a new council of ministers will be formed.

(2) *Criticism of the council of ministers (or criticism of the government)*—The parliament has the right to criticise the policy of the government or any work of any minister. The Prime Minister or any minister must reply to the questions and criticism of any member of the house.

(3) *Legislation*—Another vital function of the house of the people is to make laws for the country. In fact, many laws have been passed by the parliament.

(4) *Control over the finance*—The house of the people controls the purse of the government. The house of the people allows the government to spend money on this and that item. Again, the house of the people shows the government how the money could be raised from the country by taxes. All money bills must be introduced in the house of the people. About money bills the council of states has got nothing to do. This is a sure proof of the superiority of the house of the people to the council of states.

The Speaker and the Deputy Speaker

A person is necessary to preside over a meeting. Similarly, a person is necessary to preside over the proceedings of the *Lok Sabha*. He is called the Speaker. In his absence the chair is taken by a person who is called the Deputy Speaker. They hold office during the normal life of the parliament. The Speaker can also give up his post by resignation. He can, however, be removed from office after 14 days' notice and by a resolution supported by the majority members.

Speakers of the Lok Sabha

G.V. Mavlankar	1952-56
M. Ananthasayanam Ayyanger	1956-62
Hukam Singh	1962-67
N. Sanjeeva Reddy	1967-69
G.H. Dhillon	August 1969—30 November 1975
B.R. Bhagat	December 1975—March 1977
N. Sanjeeva Reddy	March 1977—July 1977
K.S. Hedge	July 1979—1977
Bal Ram Jakhar	14 January 1980—

The presiding officer of the *Lok Sabha* or the lower house of the parliament in India is called the Speaker. In the constitution of India there is a provision for a Speaker and a Deputy Speaker to conduct the business of the house of the people. In general his position is similar to that of the Speaker of the British house of commons. When a new house sits after election, a Speaker is elected. He is generally a moderate member of the ruling party. The salary of the Speaker is Rs. 2,250/-. He is supposed to be impartial to all the parties like a judge in a court of law is equal to all the lawyers. The Speaker has a very august position. Every member addresses the Speaker like the lawyers in a court addressing the judge. Normally the Speaker does not vote. But when the issue can be decided by one vote, he gives his vote known as the casting vote. It is the Speaker who has great power, because he alone is competent to certify a money bill, he can adjourn the parliament and disallow a motion. The constitutional position of the Speaker needs clarification in view of the fact that in both West Bengal and Punjab the Speakers created constitutional deadlock by systematically adjourning the assembly.

In the *Rajya Sabha* also there is a presiding officer. There he is called the Chairman. And his deputy is called the Deputy Chairman. The Vice-President of India is the Chairman of the Council of States and he presides over all its meetings. The functions of the Chairman and the Deputy Chairman are like those of the Speaker and the Deputy Speaker. The salary of the Chairman of the Council of States is that of the Speaker *i.e.* Rs. 2,250/-.

A Speaker is to be neutral and impartial, though he is a member of the party in power. Generally a Speaker is not a radical member of any party but a moderate member. His function is to control the proceedings of the house. Each member addresses the Speaker and not the house. A member cannot speak without his permission. In ordinary practice the Speaker does not vote. But in the event of a tie the Speaker will exercise his "casting vote" to untie the knot.

Question Hours—The function of the parliament is not only to make laws. It has other functions like informing the members of various activities of the government. When the parliament is in session, the government has to disclose its policy matters in the parliament and not outside. But such inter-mentions are not always ade-

quate. For that purpose the members are given the right to put questions to the ministers about its activities. Such questions are put during the question hours, which are generally the first hour of each session.

The questions are of two types. There are some questions for which the answers are so simple that they can be orally replied. Such questions are given a star mark and called the "starred" questions. Questions which are of technical nature and which need serious scrutiny of records are generally unstarred. Such questions are usually replied by the ministers unless such answers are to be withheld on grounds of security of the state.

Questions and answers in the parliament have enormous public utility. For example, a member can ask : "May I know from the Minister of Relief and Rehabilitation that doles have been suspended to the refugees from Bangladesh ?" The reply given by the Minister of Relief and Rehabilitation will have to be satisfactory and to the point, otherwise the impression will be that the government is trying to conceal the matter.

The Rajya Sabha

The council of states in India is not only the best constituted second chamber in the world, it is also the best well-balanced in its power to fit in modern democracy and to serve the constitutional purposes which a second chamber in a democracy is required to perform in the best possible manner.¹ According to Late M.C. Setalvad, the council of states (the *Rajya Sabha*) is in a way similar to the upper house in England, though it is almost wholly elected and has no hereditary element in it.

1. *The Modern Review*, 1955, p. 372

Composition of the Lok Sabha and the Rajya Sabha

	Number of Members	Minimum age of members	Mode of Election	Term of Office of Members	Presiding Officer	Maximum Duration	Money Bills
<i>Lok Sabha</i>	545	25 Years	Direct election	5 Year	Speaker	5 Years	Power to Originate Money Bill
<i>Rajya Sabha</i>	250	30 Years	Indirect election 238 members, Nominated by President 12 members	6 Years	Chairman	Permanent body	No power to Originate Money Bill

Composition and Functions of the Rajya Sabha

The council of states (*Rajya Sabha*) is the upper house of the Indian parliament. It consists of not more than 250 members of whom 238 are indirectly elected. The people do not directly vote for the members of the council of states. To make it simple, the people vote for the members of the legislative assemblies and these members of legislative assemblies, in their turn, vote for the members of the council of states.

The number of the members are not equal for all states. It is fixed by the constitution for each state in accordance with the size and population of the state. For example, we may say that Uttar Pradesh has 34 members, whereas Bihar has 22 members in the council of states.

Not more than 12 members are nominated to the council of states by the President from among the highly learned and qualified persons.

Any person who is a citizen of India and at least 30 years of age can become a member of the council of states. Like the members of the house of the people, the members of the council of states get Rs. 500/- per month.

Like the Speaker and the Deputy Speaker of the house of the people, there are a Chairman and one Deputy Chairman in the council of states. It is the Vice-President of the India who is the Chairman of the council of states and he presides over its meetings. The functions of the Chairman and the Deputy Chairman are like those of the Speaker and the Deputy Speaker of the house of the people.

One chief difference between the house of the people and the council of states is that the house of the people has a life of 5 years, but the council of states is a permanent body. After every two years $\frac{1}{3}$ of its old members retire and vacate their seats which are filled up accordingly.

Functions of the Rajya Sabha

The functions of the council of states are almost the same as those of the house of the people. The formation of the council of ministers is not a work of the house of the people alone. In fact, many ministers are members of the council of states. Similarly, control of the cabinet, criticism of the government or any minister are works of the council of ministers also. But one thing is that the

council of ministers is responsible only to the house of the people and only the house of the people can compel the ministry to resign.

Again, no money bill can be introduced in the council of states. It must be introduced in the house of the people.

Now, a question may arise : if the two houses are of equal functions, what is the use of keeping two ? The answer is that if one house goes wrong, other house will correct it. So, the upper house is like a brake to check the wrongs of the lower house.

Chairmen of the Rajya Sabha

Dr. S. Radhakrishnan	1952-62
Dr. Zakir Hussain	1962-67
V.V. Giri	1967—3 May 1969
G.S. Pathak	31 August 1969—31 August 1974
B.D. Jatti	31 August 1974—31 August 1979
M. Hidayatullah	31 August 1979—

Procedure of Legislation—from Bill to Act

Any proposal for legislation by any member of the parliament is called a bill. A bill may be introduced in any of the two houses. A bill may be passed or rejected by the parliament. When a bill is passed by one house, it is sent to another house. If it is passed by that house also, it will be sent to the President for his assent. Only when the President gives his assent, the bill becomes an Act. So, the difference between the bill and an Act is that the bill has no force of legality. But the Act has the force of legality and must be honoured by the court of law.

Different stages through which a bill becomes an Act

The procedure in both the houses are same. Every bill has to be read three times and passed through five stages in each house. The five stages are—the first reading, the second reading, the select committee stage, the report stage and the third reading.

(1) *The First Reading*—All bills (except the money bills) may be introduced in any of the two houses of the parliament. It may be introduced by a minister or by an ordinary member. If the introduction of the bill is opposed, a vote is taken and if the majority is in favour of the bill, it is all complete for the first reading. Then the bill is published in the *Gazette of India*.

(2) *The Second Reading*—About the second reading the mover of the bill may choose any of the three alternatives—(i) he may want that the bill should be decided by the house directly (ii) he may refer the matter to a select committee (iii) he may want to get public opinion about the bill. There is no detailed discussion at this stage.

(3) *The Select Committee Stage*—A bill is generally referred to a select committee. It is a committee consisting of some members of the house. During the committee stage the bill is thoroughly discussed clause by clause. The select committee can make any change it pleases.

(4) *The Report Stage*—The members of the select committee submit their reports about the merits and defects of each clause. The mover of the bill will request the house to accept the bill. Then discussion of the bill begins clause by clause. The members are allowed to move amendments. Vote is taken about every clause and a majority vote decides the issue.

(5) *The Third Reading*—Now debates are allowed for and against the bill as a whole. Only verbal amendments are allowed at this stage. If the bill is passed by a majority of the members present and voting, the bill is declared "passed" by the house.

Passing of the bill in other house—When a bill is passed in one house, it is sent to the other house for passing. The other house will do all the five stages of works. The house may pass it with or without amendment. If there is disagreement between the two houses, the President may arrange a joint meeting of both the houses. If it is passed by the joint meeting of both the houses (in case of disagreement), the bill will be sent to the President for his assent.

The President's assent—The President may give his assent to the bill or reject it. If he gives his assent, the bill becomes an Act, with effect from the date of his assent.

These are the different stages through which a bill becomes an Act.

STAGES OF A BILL

MINISTER
PRELIMINARY
CONSULTATIONS
AND DISCUSSIONS
WITH TREASURY ETC

BILL
DRAFTED BY
LEGAL EXPERTS

CABINET
APPROVES DRAFT &
DECIDES WHEN IT WILL
BE INTRODUCED

LOK SABHA
1st. READING
(FORMAL)

BILL PRINTED AND
CIRCULATED TO MEMBERS

2nd READING
(DEBATE ON
GENERAL PRINCIPLES)

COMMITTEE STAGE
(DETAILED CONSIDERATION)

REPORT STAGE

3rd READING
(GENERAL DEBATE)

RAJYA SABHA
SIMILAR PROCEDURE
THE HOUSE MAY ACCEPT
IT OR RETURN IT
WITH AMENDMENTS

AFTER PRESIDENT'S ASSENT
BILL BECOMES LAW

About the money bill

How does a money bill become an Act ? A money bill cannot be introduced in the council of states. It must be introduced in the house of the people. Again, a money bill cannot be introduced without the prior approval of the President. It will then have all the five stages as in the case of an ordinary bill. If it is passed by the house of the people, it will be sent to the council of states. The council of states must pass the bill. If it does not pass it within 14 days, it will be taken as "passed" by both the houses. So about the money bills the council of states has got no powers and functions. After that, it will be sent to the President for his assent. After the President gives his assent the bill becomes an act with effect from the date of assent.

Joint sitting of two houses

The procedures mentioned above are the normal procedures in the two houses. But the extra-ordinary procedure of a joint sitting of the two houses becomes necessary at times : (1) When one house passes a bill and the other house suggests some amendments which are not approved by the originating house, a joint session of both the houses is called for. (2) A second occasion for a joint sitting will arise, when one house passes the bill and the other house rejects it. (3) The third occasion will be when more than six months elapse from the date of the receipt of the bill by the other house and even then the bill has not been passed by it. A joint sitting in a stable democracy like India will be rare. It happened only once in 1961 to diffuse the stalemate over the Dowry Prohibition Bill.

Non-legislative functions of the law-making bodies

The legislature not only makes laws but does many other works as well. The following are some of the non-legislative functions of the legislature :

(i) *Formation of the council of ministers*—It is one of the important functions in a parliamentary system of government for a legislature to form the ministry. A minister is invariably a member of the parliament. The general practice is that a minister should be a member of the *Lok Sabha* or the house of the people. Thus the ministry making is one of the important functions of the parliament. The fate of the ministry also depends on the wishes of the *Lok Sabha*. If the *Lok Sabha* expresses its no-confidence in the ministry, that ministry must resign.

(ii) *Criticism of the council of minister or the government*—Members of the opposition party in the parliament point out the shortcomings of the government. The members may demand explanation from the government in that regard. The ministers are to give suitable replies to all such questions. A parliamentary government will be meaningless, if the ministers are not answerable to the parliament.

(iii) *Control over finance*—This power is given only to the *Lok Sabha* and not to the *Rajya Sabha*. The budget and the finance bills are to be passed by the *Lok Sabha*. The government cannot spend any money without the sanctions given to such expenditure by the parliament. Thus for all financial sanctions the government has to totally rely on the wishes of the parliament.

(iv) *Securing information of public importance*—Securing information of public importance is an important work of the legislature. The members keep themselves informed of various happenings in the country and bring them to the notice of the government. In the budget session of the parliament in March 1982 some of the opposition members drew the attention of the government to the incident of a probationer of the Indian Administrative Services misbehaving with a female probationer at the Lal Bahadur Shastri Academy of Public Administration, Mussoorie. The union government had to take the drastic disciplinary step of dismissing the erring probationer on public demands in the floors of the *Lok Sabha*.

(v) *Amending the constitution*—The amendment of the constitution is another vital function of the legislature. Truly speaking, amendment is not an ordinary law-making. It is rather revising the constitution.

(vi) *Serving the interest of the constituency*—Every member is morally obliged to help the people of his own locality. Thus he helps the people of his place in getting employments, moves the government for bridges, schools and hospitals for his own village or town.

(vii) *Judicial functions*—Legislature some times acts as judges. The house of lords of England is the highest court of appeal in that country. In India, however, we do not have such functions for the legislatures. But the Indian parliament has power to punish anybody who is found guilty of the breach of the privileges of the parliament.

(viii) *Investigatory responsibility*—The investigating work is another function of the legislature. Whenever there is any political disturbance in the country, the members of the parliament visit those

places to make an on-the-spot study of the situation. Such a parliamentary delegation went to Moradabad to make an on-the-spot study of the communal riots in 1980.

Different factors that work behind every legislation

There are various factors that are found at work behind every legislation. They are—majority opinion, pressure groups, influence of party bosses and popular violence.

(i) *Majority opinion*—Majority opinion is the foundation-stone of all legislations. It is the public opinion which the ruling power considers at the time of taking up a legislation. Thus the majority people in India were of the opinion that the Zamindari system should be abolished. So an Act to this effect was passed by the Indian parliament.

(ii) *Pressure group*—Pressure group is another pull behind the legislations. The making of Hindi as the national language of India is more a pressure from the Hindi chauvinists in parliament than for any other consideration.

(iii) *Influence of party-bosses*—The influence of party bosses also results in making a law. The transfer of Berubari to Pakistan in 1960 was passed into a law despite strong opposition by the people of West Bengal only to keep the personal prestige of Prime Minister Jawaharlal Nehru who had promised the transfer of Berubari to President Ayub Khan of Pakistan.

(iv) *Popular violence*—The last but not the least factor is popular violence. Right to vote for women in England was made a law because of the violence resorted to by the women of England in demand for such rights.

CHAPTER X

THE ROLE OF THE OPPOSITION

Evolution of democracy is not possible, if we are not prepared to hear the other side. We shut the doors of reason when we refuse to listen to our opponents, or having listened, make fun of them. If intolerance becomes a habit, we run the risk of missing the truth.

—Mahatma Gandhi

The parliamentary system of work requires not only stout opposition, not only forcible expression of opinions and views but an essential basis of co-operation between the opposition and the government. Not in regard to any particular matter but the whole basis of approach is after all a co-operative basis to carry the work of parliament forward and in so far as we succeed in doing that we succeed in laying the foundations of parliamentary work firmly.

—Jawaharlal Nehru

The form of government which a democracy chose was not relevant ; what was important was that the majority have respect for dissenting views, giving rise to co-operation between all functions.

—James Callaghan
(Former Prime Minister of Britain
in his Rajaji Endowment
lecture delivered in New Delhi
on 24 March 1981)

THE ROLE OF THE OPPOSITION

Role of the Opposition in a Democracy

Parliamentary democracy will be meaningless without an effective opposition. The role of the opposition party is better felt in a two-party system as in England. In that country when the Conservative Party is in power, the Labour Party is in the opposition and *vice-versa*. But the role of the opposition is not so effectively felt in India which has a multi-party system. Yet, ever since the inception of the Indian republic, the opposition played its effective role. In fact, the opposition in India politics began with Dr. Shyama Prasad Mukherjee who is rightly called the father of Indian opposition in parliament. But the opposition could not come to power or to unseat the Congress Party until the general election of 1977 when for the first time a non-Congress party came to power. That was the Janata Party which was a mixture of various elements. During the short regime of the Janata Party the post of the leader of the opposition in the light of the English counterpart was introduced in India and in April 1977 Mr. Y.B. Chavan of the Congress Party was given the status of the leader of the opposition with a special salary. In England the leader of the opposition draws the same salary as that of the Prime Minister, because he represents "her majesty's opposition".

It is essential for a parliamentary form of government to function effectively to have a strong opposition party so that the government should be kept on its toes knowing that the opposition party is waiting for the electorate to change the government and to put it in power. Let it be said to the credit of the Morarji Desai's government that it realised the importance of a responsible opposition. It gave a status and position to the leader of the opposition and also

gave him facilities on the media like All India Radio to express his views to the public.



The Prime Minister Mrs Indira Gandhi discussing the problems of Gujarat with the Members of the opposition parties at New Delhi on 24 March 1981
The Statesman (Delhi Edition), of 25 March, 1981

The main functions of the opposition

In a parliamentary democracy like India the opposite party is primarily called upon to make a fair and effective criticism of the government. Secondly, the opposition is to see that the government bills are subjected to the rigour of screening before they are made laws. Thirdly, it is also a function of the opposition to see that the executive policies of the cabinet are made answerable to the parliament.

A constructive programme is cast upon the opposition party to discharge for the benefit of the country. It will be a futile exercise to oppose or criticise for the sake of opposition or criticism. It may be that on some issues the opposition does not see eye to eye with the government. But there are other issues on which the opposition may have common views.

The Leader of the opposition

The leader of the opposition has a great role to play in a democracy. This has been acknowledged by the Janata-government in July 1977. The leaders of the opposition in both the *Lok Sabha* and the *Rajya Sabha* are now given a special status. They are given salary and other facilities to enable them to discharge their functions.

Powers and functions of the leader of the opposition

Like the leader of the majority party forming a cabinet with his colleagues, the leader of the opposition party also forms a mini cabinet. This is called the "shadow cabinet". That body also musters strength with the experts within itself. It can move motion of no-confidence in the government on some burning issues like price hike, breach of law and order etc. During question hours it is the duty of the members of the opposition party to bring to the knowledge of the government some facts or incidents which are vitally important and also ask for explanation from the government.

What the opposition Party should do ?

In a parliamentary democracy the task of the opposition is to guide the ruling party which, if left alone, may feel too confused to act systematically and too independent to govern unbiasedly. But in India the situation at the moment is disconcerting. While the election verdict has disarrayed the opposition parties, one notes with chargin

that they lack an awareness of the extent to which they might still influence events.

The opposition party's role is not confined to the floors of the parliament. The opposition party mobilises public opinion by holding public meetings. There are some newspapers which are the spokesmen of the oppositions party. The leader of the opposition is to co operate with the government when the country is endangered by foreign aggression or communal disturbances as happened in Moradabad in 1980 and language disturbances as took place in various parts of the country particularly in Assam in 1960.

The Prime Minister Mrs. Indira Gandhi has pointed her accusing finger at the opposition. There is no denying that, unlike what happens in other democracies, the opposition in India both at the central and the state levels has become synonymous with obstruction. But Mrs. Gandhi knows more than anybody else that such an obstructionist policy is by no means the monopoly of the so-called leftist parties or the heterogeneous elements which occasionally come up to exert organised brute force on the government.

A considerable chunk of the Congress which has won popular mandates many times has also contributed to perfecting the weapon of violent obstruction. The truth is that in India's partisan politics those who can flex muscles are prized boys. Since the leaders, barring a few, are bankrupt in democratic values and incapable of democratic responses to the challenging situations, they almost wholly depend on these children of their parties to capture or retain their power.

Acharya Vinoba Bhave launched a "*santi sena*" or "peace army" to deal with the domestic violence. This is the only way to solve the problems of political violence. The entire police personnel should be gradually merged with army establishment and the criminally disposed politicians should be sternly dealt with by specific Acts of the legislature and by social boycotts.

CHAPTER XI

THE GOVERNMENT OF THE STATES

I am fully assured that I will have nothing to do but to act as a constitutional Governor signing on the dotted lines, but it so happened that I actually found myself an "autocrat" during the two days for the outgoing Chief Minister had not come in.

—Late Sri Prakasa
(Former Governor of Madras)

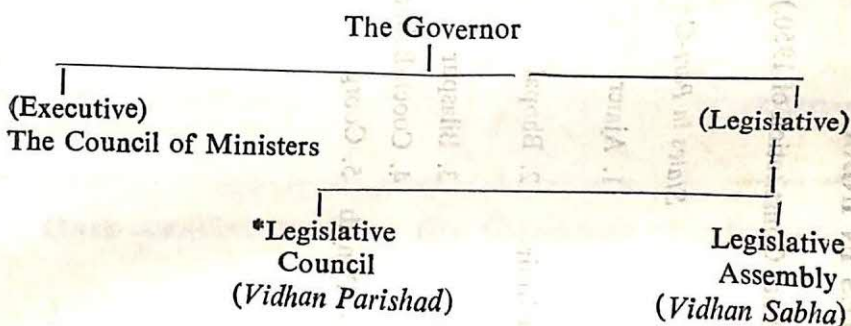
Like the President the Governor also acts on the aid and advice of the council of ministers in executive action and is not required by the constitution to act personally without the aid and advice of the council of ministers or against the aid and advice of the council of ministers. Where the Governor has any discretion, the Governor acts on his own judgment. The Governor exercises his discretion in harmony with the council of ministers.

—Justice A.N. Ray
(Former Chief Justice of India)

The state Governor has, after 1967, come to be looked upon not simply as the ceremonial head of the state government but as a key-figure in the maintenance of the state-centre relationship. The Governor has, by his actual behaviour in times of constitutional crisis, to inspire confidence that he is both a just and honest umpire in the game of politics and a reliable guardian of the autonomy and interests of the state.

—Professor P.N. Masaldan
(Professor of Political Science,
Lucknow University).

THE GOVERNMENT OF THE STATES



The Governor of a State

The position, powers and functions of the Governor under the constitution.

As the President is the head of the executive power of the union, the Governor is the head of the executive power of the state. All administrative matters in the state are taken in the name of the Governor.

But a difference between the President and the Governor is that the President is elected, but the Governor is not elected. He is appointed by the President. He holds office for a term of 5 years. But he may be removed earlier by the President or he may leave the

*Legislative council is the upper house in the state legislature. This upper house i.e., the legislative council is there in many states and in many other states only the legislative assembly functions. The following seven states have two chambers—Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra, Tamil Nadu and Uttar Pradesh.

STATES IN INDIA

(As in the Original Constitution of 1950.)

States in Part-A		States in Part-B		States in Part-C	Territories in Part-D
1. Assam		1. Hyderabad	1. Ajmer		1. The Andaman and Nicobar Islands.
2. Bihar		2. Jammu and Kashmir	2. Bhopal		2. Acquired Territories (if any).
3. Bombay		3. Madhya Bharat	3. Bilaspur		
4. Madhya Pradesh		4. Mysore	4. Cooch-Behar		
5. Madras		5. Patiala and East Punjab	5. Coorg		
6. Orissa					
7. Punjab					
8. The United Provinces					
9. West Bengal					

job by resignation. In order to become Governor a person must be (a) a citizen of India, (b) must be at least 35 years of age and, (c) must not hold any office of profit. A Governor gets Rs. 5,500/- per month.

Unlike the President the Governor has no military powers. But he has (i) executive, (ii) legislative, (iii) judicial and (iv) emergency powers.

(i) *Executive powers*—The Governor is the head of the executive power of the state. He appoints the Chief Minister and other ministers of the state and the members of the State Public Service Commission. But like the President, the Governor's powers to appoint the ministers is very formal. In fact, the majority party in the legislative assembly selects their leader who becomes the Chief Minister. The Governor simply approves of it. Similarly, the other ministers are selected by the Chief Minister and the Governor simply approves of it.

Oath administered to the Governor of a State

I, swear in the name of God (or solemnly affirm) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of.....

(ii) *Legislative powers*—If the President is a part of the parliament of India, the Governor is a part of the state legislature. So, his legislative powers are like those of the President. So, the Governor can summon or dissolve the legislative assembly. He can make ordinances which have the force of Acts. All bills passed by the state legislature must be sent to the Governor for his assent. No money bill can be introduced in the assembly without his prior approval.

(iii) *Judicial powers*—Like the President, the Governor can also grant pardon or relax a sentence in all matters where the authority of the state government extends. But one thing to be noted is that the Governor cannot pardon a death sentence. Only authority to pardon a death sentence is the President.

(iv) *Emergency powers*—The Governor has no emergency powers. The President is the only person to exercise the emergency powers. But the Governor has the powers to inform the President that an emergency exists in the state and he may invite the President to exercise his (the President's) emergency powers.

States in India (as in May 1982)

<i>States</i>	<i>Capitals</i>
1. Andhra Pradesh	Hyderabad
2. Assam	Dispur
3. Bihar	Patna
4. Gujarat	Gandhinagar
5. Haryana	Chandigarh
6. Himachal Pradesh	Simla
7. Jammu and Kashmir	Srinagar (<i>Summer</i>) Jammu (<i>Winter</i>)
8. Karnataka	Bangalore
9. Kerala	Trivandrum
10. Madhya Pradesh	Bhopal
11. Maharashtra	Bombay
12. Manipur	Imphal
13. Meghalaya	Shillong
14. Nagaland	Kohima
15. Orissa	Bhubaneswar
16. Punjab	Chandigarh
17. Rajasthan	Jaipur
18. Sikkim	Gangtok
19. Tamil Nadu	Madras
20. Tripura	Agartala
21. Uttar Pradesh	Lucknow
22. West Bengal	Calcutta

Constitutional position of the Governor

Although the Governor has no option but to ask the leader of the majority party to form the cabinet, the task will be different when no party can claim absolute majority in the state legislature. In such a case it will be the discretion of the Governor to call upon the leader of any of the parties having equal strength in the legislature to form the government. But if that government is outvoted or reduced in strength by defection of its members to other parties and if the Governor is satisfied that no other party can ensure a stable government, he may invite the President's rule in the state.

The Governor summons the state legislature and reads out his address on the opening session. This is called the Governor's address. Actually the speech is prepared by the cabinet and it spells out the government's past achievements and future promises.

Certain types of bills will not be signed by the Governor who will reserve them for the consideration of the President. The following are the types of bills which the Governor will reserve for the consideration of the President :

(1) A bill which may create dispute between the state government and the union government.

(2) A bill which may undermine the dignity of the High Court.

(3) A bill which relates to the compulsory acquisition of private property.

(4) A bill which purports to impose taxation on a subject which is declared "essential" by the an Act of the parliament.

According to Mr. Asoke K. Sen : "The executive powers of a state are vested in the Governor who has to function, like the President, on the advice of his council of ministers, who are collectively responsible to the state legislature. The executive functions of the state are distributed between and discharged by the ministers according to the rules of business framed by the Governor. In appreciating the role of the Governor of a state under our constitution it is important to note that unlike the President, he is not elected by the local legislature or by the electorate in the state, but is appointed by the President of India and he holds office during the pleasure of the President."

*Office of the President and the Governor of a State compared.***The President**

1. The President of India is elected in an indirect election for a term of 5 years.
2. The President can be removed from office by a process known as impeachment.
3. The President's monthly remuneration is Rs. 10,000/-.
4. The President is a figure-head and he has to accept the aid and advice of the council of ministers of the union.

The Governor

1. The Governor of a state is appointed by the President and he holds office during the pleasure of the President.
2. The Governor may be removed by the President.
3. The Governor draws an emolument of Rs. 5,500/- per month.
4. The Governor is also a figure-head. But in some matters he is free from the control of the council of ministers. For example, the Governor while recommending to the President to impose President's rule in the state need not take the aid and advice of the council of ministers of that state.

Legislative functions, the veto power and ordinance making power.

5. In such matters the President has the following functions: If it is a money bill, the President will either approve it or reject it. But if the bill is a non-money bill, the President has the other option of sending the bill to the legislature with a message for consideration. The legislature must send it to the President within
5. The veto power of the Governor is to a certain extent different from that of the President. The Governor can reserve a bill for the consideration of the President. Once the bill is sent to the President, the Governor ceases to have any hold over that bill.

six months after it is passed with or without amendments. Even then the President may not approve of it, though it has passed the legislature for the second time also.

6. With regard to the ordinance making power there is some difference. The Presidential ordinance comes to an end on that date when the Parliament re-assembles when the ordinance will expire. But this can be cancelled earlier, if both the houses take a resolution to that effect.
6. The gubernatorial ordinance comes to an end on the expiry of six months from the date of the re-assembly of the state legislature. But the state legislature by a resolution can put an end to it earlier.

The judicial functions with regard to granting pardon.

7. President has the power to grant pardon, reprieve, respite, suspension, remission or commutation of a sentence or punishment awarded by the court martial.
7. The Governor has no such powers.
8. The President can grant pardon in the case of a death sentence.
8. The Governor has no such powers under the constitution. But if there is any such powers under any other law, then only the Governor can exercise such pardon in case of a death sentence also.

An ideal Governor—who can be ?

The Constitution never meant the office of the Governor to be merely ornamental. For the functioning of the constitutional government in a state, the Governor provides the kingpin around which the entire machinery of the state must evolve. The Governor forms a stable link between the central government and the state government and embodies in his office the machinery through which the government in a state will function in accordance with the constitution.

The office of the Governor was never meant to be an ornamental sinecure. He is not required to be an inert cypher and his character, calibre and experience must be of an order that enables him to discharge with skill and detachment his dual responsibilities towards the central and the state executive of which he is the constitutional head.

He has also to play an important role for national integration and for the preservation of national standard in public administration. In order to give a true meaning to the office of the Governor, the first essential thing is to choose a proper person for filling the office. It should not be treated as the last refuge of a retired politician or a civil servant or as a place of distribution of patronage. Outstanding men in the political, social and educational life of the country who are not controversial figures must obviously be the proper choice.

The office of the state Governor in our constitutional set-up has assumed an importance that was perhaps not fully foreseen by the makers of the constitution. As a matter of fact, we became really aware of the importance attached to the role of the Governor in the maintenance of the balance of our federal system only after 1967 when the monolithic power of the Congress Party cracked as a result of the emergence of the new political forces in several states of India. The transformation in the position of the Governor thereafter shows how the change in the political structure has impact on a constitutional functionary. The moral and intellectual calibre and the political antecedents of those selected for this high office should be taken into consideration in appointing a Governor.

About the power and position of the Governor Dr. L.M. Singhvi rightly said : "No doubt, the office of the Governor has a unique importance in the working of our union-state relations and in filling political vacuum as and when the constitutional machinery in the state breaks down. Even in the normal working of responsible

government, the Governor has extensive influence. The office of the Governor is, therefore, not merely an embellishment, on a remnant of the colonial past or what may be described as a dignified part of our constitutional apparatus. A Governor is not merely seen on glittering occasions but has also to be listened to. Indeed the office of the Governor is endowed with functions which have great relevance to the proper functioning of our constitution".

THE GOVERNOR'S RELATION WITH THE COUNCIL OF MINISTERS

What is the constitutional position of the Governor in relation to the council of ministers of that state ?

The Governor's relation with the council of ministers in the state is the same as the President's relation with the council of ministers in the centre. So, the council of ministers aids and advises the Governor in his functions. The Governor is the head of the state government. He appoints the council of ministers. In fact, the majority in the assembly select their own leader, who becomes the Chief Minister and the Governor simply approves of it. Again, the Chief Minister selects the other ministers and the Governor simply approves of it. So, the Governor has got nothing to do in the appointment of the council of ministers. So, in this matter the position of the Governor is like that of the President.

But the Governor is more free from the control (aids and advice) of the council of ministers. It is clear, if we take the case of the emergency powers of the Governor. The Governor for himself has no emergency powers. But he can inform the President and invite him to declare emergency in his state. When he feels that the administration of the state "cannot be carried on in accordance with the provision of the constitution." It means that the existing ministry is no longer capable to run the government of the state. "In accordance with the provisions of the constitution." So, when the Governor invites the President to exercise emergency powers, he will do it without the aid and advice of the council of ministers. So, we may conclude that the Governor normally takes the aids and advice of the council of ministers. But he may reject the advice of the council of ministers and invite President's emergency powers.

THE COUNCIL OF MINISTERS IN THE STATE

As there is a council of ministers in the union government, there is a similar council of ministers in the state government. According to the constitution, the council of ministers in the state will aid and advise the Governor in his functions. From this it is clear that the Council of Ministers has got great powers.

Appointment of the council of ministers

The Council of Ministers in the state is appointed by the Governor. But the Governor's functions about the appointment of the council of ministers is very formal. In fact, the majority-party in the legislative assembly select their leader, who becomes the Chief Minister. And the Governor simply approves of it. Similarly, the Chief Minister selects other ministers like the Finance Minister, Education Minister, Transport and Communication Minister etc. from among the members of the legislative assembly according to his own choice. And the Governor simply approves of it. So, the council of ministers is formed from among the members of the assembly. If the assembly expresses its non-confidence in the council of ministers, the Chief Ministers must resign. And along with the Chief Minister all other ministers will also resign. So, the fate of the council of ministers depends upon the likes and dislikes of the legislative assembly alone.

Oath of office and secrecy administered to a Minister for a State

1. **Oath of office :** *I,, do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State of..... and that I will do right to all manner of people in accordance with the constitution and the law without fear or favour, affection or ill-will.*

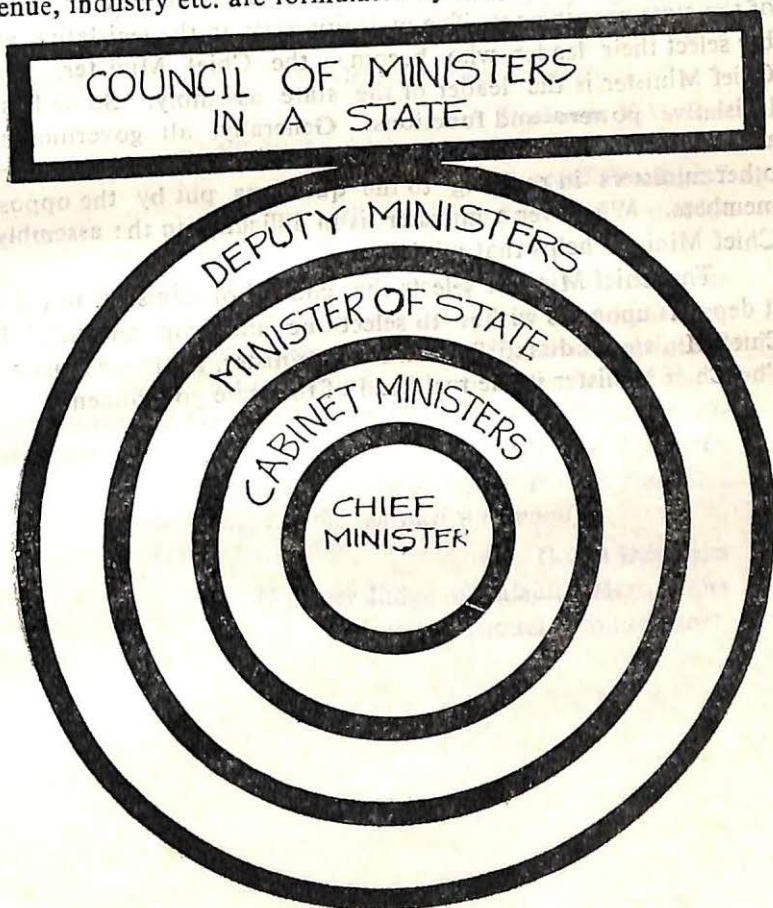
2. **Oath of secrecy :** *I,, do swear in the name of God (or solemnly affirm) that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State of.....except as may be required for the due discharge of my duties as such Minister.*

There is no fixed number for the council of ministers for any state. It depends upon the needs and desires of the Chief Minister. There are also some deputy ministers to assist the ministers of their department. There is no fixed and uniform salary for the ministers of all the states. It is decided and fixed by each state-legislature.

Functions of the council of ministers

Like the union council of ministers, the state council of ministers has two important functions—(i) executive and (ii) legislative.

(i) *Executive functions*—The Governor is the nominal head of the state government. The real power is in the hands of council of ministers. In fact, all policies of the state-government in education, revenue, industry etc. are formulated by the council of ministers.



(ii) *Legislative functions*—The great legislative functions of the council of ministers are very clear because the council of ministers are members of the legislative assembly. So, all laws of the state government are piloted by the council of ministers. In the assembly the Chief Minister or any minister introduces a bill and all the other ministers jointly support it. So, the council of ministers is the very heart of the state legislature.

Powers and functions of the Chief Minister of a State.

The position of the Chief Minister is almost like that of the Prime Minister. As the Prime Minister is the main key of the political switch-board of the union government, the Chief Minister is also the same in the state government. The Chief Minister is the head of the state government. The majority-party in the legislative assembly select their leader, who becomes the Chief Minister. So, the Chief Minister is the leader of the state assembly. So he has vast legislative powers and functions. Generally, all government bills are introduced in the assembly by the Chief Minister. He helps the other ministers in replying to the questions put by the opposition members. Whenever a minister is in difficulty in the assembly, the Chief Minister helps that minister.

The Chief Minister selects the council of ministers in the state. It depends upon his wishes to select one and drop another. If the Chief Minister is dissatisfied with any minister, the latter must resign. The Chief Minister is the real head of the state government.

CHAPTER XII

THE STATE LEGISLATURE

The ban on the Swantantra of Madras by the Speaker of the Madras Assembly, the prosecution of Dineshaw Mistri, the proceedings against the Times of India in Bombay, the resolution moved in the Madras Legislative Council by the Chief Minister himself condemning Prakasam, the refusal on the part of the Speaker of the Bihar Assembly to allow any member to put a question to a minister, unless the member defined a particular word, all these may be all right from the legal point of view to indicate the honour and sovereignty of the legislatures, but they are also beacon lights and show the extent to which powers could be misused by political parties in future.

Professor K.V. Rao

“State Legislatures in india : Their powers
and Privileges”

The Modern Review 1954 p. 446.

Though a uniform pattern of government is prescribed for the states, in the matter of the composition of the legislature, the constitution makes distinction between the bigger and the smaller states. While the legislature of every state shall consist of the Governor and the state legislature, in some of the states the legislature shall consist of two houses, namely, the legislative assembly and the legislative council, while in the rest there shall be only one house, i.e. the legislative assembly.

Dr. Durga Das Basu

(Former Judge of Calcutta High Court
and constitutional commentator).

THE STATE LEGISLATURE

The state legislature consists of the Governor, the legislative assembly (*Vidhan Sabha*) and the legislative council (*Vidhan Parishad*) (where there is such a body) and the Governor. All states in India except Andhra Pradesh, Bihar, Jammu and Kashmir, Tamil Nadu and Uttar Pradesh have only one chamber. West Bengal and Punjab had originally two chambers. But this was abolished in 1969. The abolition or creation of the second chamber has a simple procedure. All that is required to be done is that a resolution has to be passed by the majority members in the legislative assembly. The abolition of this house was actually done in West Bengal and Punjab by a similar procedure. Again, resolution was passed in 1958 by the legislative assembly of *Vidhan Sabha* of Madhya Pradesh for the creation of Legislative Council but this has been kept in abeyance.

Oath administered to a member of the Legislature of a States

I,.....having been elected (or nominated) a member of Legislative-Assembly (or Legislative Council) do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.

STATE LEGISLATURE—COMPOSITION AND FUNCTIONS

There is no upper house i.e. the legislative council in many states. So, the legislature of most of the states consists of two parts:—(i) the Governor and (ii) the legislative assembly.

(i) *The Governor*—The Governor is not elected and the people of the state have got nothing to do with the appointment of the Governor. The Governor is appointed by the President for a period of 5 years. He may be removed earlier by the President or he may leave the post by resignation.

(ii) *The Legislative Assembly*—The legislative Assembly is composed of the members directly elected by the people. One member is elected from among 75,000 of population. Any person residing in the state who is a citizen of India and who is not less than 25 years of age has the qualification to be elected a member in the legislative assembly. And any person residing in that state who is a citizen of India and is at least 21 years of age can vote in the election. The legislative assembly has a life of 5 years. But it may be dissolved earlier by the Governor.

The assembly also elects the Speaker and the Deputy Speaker to preside over the meetings of the assembly. The Deputy Speaker acts as the Speaker when the Speaker is absent or when the post is vacant.

(i) *Functions of the Governor*—He appoints the Council of Ministers and the members of the Public Service Commission of that state. All executive functions of the state are done in the name of the Governor. He can make ordinances which will have the force of Acts of the state assembly.

(ii) *Functions of the legislative assembly*—The legislative assembly has got various functions, of which the following are the most important.

(a) *Formation of the council of ministers*—The council of ministers is formed from the members of the legislative assembly. All the ministers of the state must be members of the state legislative assembly is to form the council of ministers.

(b) *Control of the council of ministers*—The council of ministers is controlled by the state assembly. If the assembly expresses its no-confidence in the council of ministers, all the ministers must resign, and a new council of ministers will be formed.

(c) *Criticism of the government or any minister*—The assembly

can criticise the policy of the government and points out the wrongs of any ministers. It is an important work of a parliamentary democracy.

(b) *Control of finance*—The assembly controls the purse of the government of the state and allows the state government to spend this and this amount on that and that item. It also shows the government how the amount will be procured by taxes etc.

(e) *Legislation*—An important work of the state assembly is to pass laws of the state. All Acts of the state are worked out in the assembly.

(iii) *The Legislative Council*—The legislative council of a state comprises not more than one-third of the total number of members in the legislative assembly of the state and in no case less than 40 members. The minimum age for a person to become a member the legislative council is 30 years. About one-third of the members of the council are elected by members of the legislative assembly from amongst persons who are not its members, one-third by electorates consisting of members of municipalities, district boards and other local authorities, one-twelfth by registered teachers of not lower than the secondary schools, and one-twelfth by registered graduates of more than three years' standing. The remaining members are nominated by the Governor from among those who have distinguished themselves in the fields of literature, science, art, co-operative movement and social service. The legislative council cannot be dissolved. But one-third of its members retire every second year.

The state legislatures are organised according to the following schedule (figures show distribution of seats in March 1979).

Composition of the State Legislatures

	Legislative Assemblies (Vidhan Sabhas)	Legislative Council (Vidhan Parishad)
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States :

Andhra Pradesh	294	90
Assam	126	—
Bihar	324	—
Gujarat	182	—
Haryana	90	—
Himachal Pradesh	68	—
Karnataka	224	63
Kerala	140	—
Madhya Pradesh	120	90
Maharashtra	288	78
Manipur	60	—
Meghalaya	60	—
Nagaland	60	—
Orisa	147	—
Punjab	117	—
Rajasthan	200	—
Sikkim	32	—
Tamil Nadu	234	63
Tripura	60	—
Uttar Pradesh	425	108
West Bengal	294	—
Jammu and Kashmir	76	36

Union Territories :

Andaman and Nicobar Islands	—	—
Arunachal Pradesh	30	—
Chandigarh	—	—
Dadra and Nagar Haveli	—	—
Delhi	61	—
Goa, Daman and Diu	30	—
Lakshadweep	—	—
Mizoram	30	—
Pondicherry	30	—

*Nominated by the President
under Article 80 (1) (a) of
the Constitution*

	—	—
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Total	4,034	528
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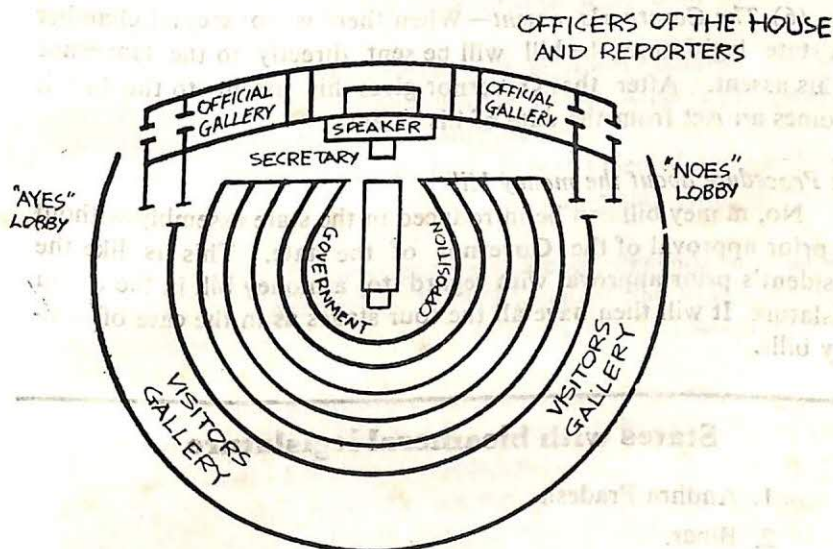
PROCEDURE OF STATE LEGISLATURE FROM BILL TO ACT

How is a bill made into an Act in the state legislature?

A bill is a proposal for legislation. A bill becomes an Act of the state when it is passed by the legislative assembly and the legislation council (where there is a legislative council) and after the Governor gives his assent to it. The different stages through which bill becomes an Act in the state legislature are almost the same as those in the union parliament. The following are the different stages :

(1) *The first reading*—A bill may be introduced by a minister or by a private member. If the introduction of the bill is opposed, a vote is taken and if the majority is in favour of the bill, it is all done for the first reading. Then the bill is published in the state gazette.

RAJASTHAN VIDHAN SABHA



(2) *The second reading*—About the second reading the mover of the bill may choose any one of the following three alternatives :

(i) he may choose that the bill should be decided by the house directly.

(ii) he may refer the matter to a select committee.

(iii) he may seek to get public opinion about the bill.

There is no detailed discussion at this stage.

(3) *The select committee stage*—A bill is generally referred to a select committee. It is a committee consisting of some chosen members of the same house. During the committee stage, the bill is thoroughly discussed clause by clause. The select committee can make any change it pleases.

(4) *The report stage*—The members of the select-committee will submit their reports about the merits and defects of each clause. The mover of the bill will request the house to accept the bill. Then discussion of the bill begins clause by clause. The members are allowed to move amendments. Votes are taken about every clause and a majority vote decides the issue.

(5) *The third reading*—Now debates are allowed for and against the bill as a whole. Only verbal amendments are allowed at this stage. If the bill is passed by a majority of the members present and voting, the bill is declared "passed" by the house.

(6) *The Governor's assent*—When there is no second chamber in a state legislature, the bill will be sent directly to the Governor for his assent. After the Governor gives his assent to the bill, it becomes an Act from the date of his assent.

The Procedure about the money bill

No, money bill can be introduced in the state assembly without the prior approval of the Governor of the state. This is like the President's prior approval with regard to a money bill in the union legislature. It will then have all the four stages as in the case of ordinary bills.

States with bicameral legislature

1. Andhra Pradesh.
2. Bihar.
3. Jammu and Kashmir.
4. Karnataka.
5. Maharashtra.

Additional procedure where there is a legislative council

After a bill has been passed by the legislative assembly, if there is a legislative council in that state, it goes to the legislative

council for its approval. In case the legislative council rejects the bill or does not take any action on it for three months or makes some amendments in passing the bill and if such amendments are not approved by the legislative assembly, then the legislative assembly will be competent to pass the bill for the second time. In such a case the bill will be sent to the legislative council for the second time. Now the legislative council's negatory decision or amendments will have no legal import and the bill will automatically become an Act. It is therefore clear that the legislative council can only delay the passing of a bill. It has no power to veto or stop its passage.

With regard to money bill, the power of the legislative council is still less. A money bill under no circumstances can be introduced in the legislative council. If the legislative council does not approve of the money bill within 14 days or makes no recommendations in respect of the money bill notwithstanding the non-action or non-recommendation, the bill will be deemed to have been passed by both the houses.

It is a common knowledge that legislative council is a useless institution. The following are some of the aspects that will show that the legislative council is a surpluseage :

In the first place, as the body is partly elected and partly nominated, this system of half-election and half-nomination has rendered it inherently weak.

In the second place, its very existence depends on the whims of the legislative assembly. In West Bengal the legislative council was abolished because the legislative assembly did not want its continuance.

In the third place, the council of ministers is responsible to the legislative assembly. The legislative council has nothing to do with the continuance of the state government.

In the fourth place, the legislative council cannot introduce a money bill. It cannot even reject or amend such a bill. What it can do at the most is that it can interpose a delay for a maximum period of 14 days or alternatively it can recommend for amendments.

In the fifth place, its position is no better in respect of all bills other than the money bills also. At the most it can block the bill by delaying it for a period of 4 months. Its disagreement may be totally ignored by the legislative assembly. On the contrary, a bill originally passed in the legislative council may be instantly rejected by the legislative assembly.

Thus the legislative council unlike the council of states in union parliament is not even a revising chamber. In the parliament the *Rajya Sabha* by rejecting a bill initiated by the *Lok Sabha* can create a deadlock which can be solved by a joint sitting of both the chambers. In the state the second chamber is denied that power and position. But since more seasoned persons are there in the legislative council it can effectively act as a brake on hasty legislation. So our condition is that if the continuance of the second chamber does not cause a financial burden on the state, it should be allowed to continue.

Procedure of passing budget in the state legislature.

There is a special procedure of passing the budget. A budget is a statement of income and expenditure of the government for the coming year. There is a special session for it. It is generally held in the month of February. The Finance Minister of the state introduces the budget in the assembly and he explains it line by line. On that day of introduction no discussion is made.

Next comes general discussion. The members will criticise the budget and the Finance Minister will reply to the criticism.

After that the Finance Minister will request the assembly to grant him the necessary money for each item and will make motion for that. Any opposition member can make opposing motions. A majority vote will decide the issue. In this way, the Finance Minister will take every item. But his request for grant for all items must be completed within 15 days.

Together with the budget a separate bill for new taxes is placed in the assembly by the Finance Minister. These proposals for new taxes have to pass the similar three stages as those of the budget.

Procedure for changes in names and creations of new states

We have noticed the names of the states at page 112. They all were not in the original constitution. Some got their names changed. Some were created by carving out from existing states and some were upgraded into state from the status of the union territory. There is one states (Sikkim) that was accepted from outside India. Names of four states were changed. The state of Travancore-Cochin got new name Kerala. Thus the name of the United Province was changed into Uttar Pradesh, Madras was changed into Tamil Nadu and Mysore was renamed Karnataka. The union territory of Laccadive, Minicoy and Amindivi Islands was renamed Lakshadweep.

Several states were created by carving territories from an existing State. Thus Andhra Pradesh was created in 1953 by separating some territories from Madras. The State of Bombay was split up into two new states—Gujarat and Maharashtra in 1960. Nagaland was carved out of Assam in 1962. Four years after in 1966 a new state namely Haryana was created by separating a part of Punjab. A new state under the name of Meghalaya came into being in 1969 by another division of Assam.

Himachal Pradesh, Manipur and Tripura were upgraded into full-fledged states from the status of union territory in 1970-71.

A land outside the geographical limit of India became a state of India in 1974-1975. This is Sikkim.

CHAPTER XIII

THE ADMINISTRATION OF THE UNION TERRITORIES

The boundaries of union territories could not be affected by a law relating to Article 3, since state in Article 3 did not include union territories.

Late Justice Dr. P.B. Gajendragadkar
(Former Chief Justice of India)

THE ADMINISTRATION OF THE UNION TERRITORIES

Genesis of the Administration of the Union Territories

India has a three-tier administrative set-up—the central government, the state government and the administration of the union territories. We have already noticed the first two. Let us now know a bit of the administration of the union territories. It may be told at the beginning that in the original constitution the term “union territory” was not there. As a matter of fact, the original constitution envisaged four categories of states known as Part A State, Part B State, Part C State, and Part D State. Part C States were administered by the President through his agent who was designated the Chief Commissioner or Lieutenant Governor. As a matter of fact, the union territories are legatees of the erstwhile Part C States. As in May 1982 the following are the union territories :

(The Union Territories as in May 1982)

<i>Union Territory</i>	<i>Capitals</i>
Andaman and Nicobar Islands	Port Blair.
Arunachal Pradesh	Itanagar.
Chandigarh	Chandigarh.
Dadra and Nagar Haveli	Silvassa
Delhi	Delhi.
Goa, Daman and Diu	Panaji.
Lakshadweep	Navaratti.
Mizoram	Aizawl
Pondicherry	Pondcherry.

Although in rank all the union territories are equal, there is, however, some difference in their administration, because of some parliamentary enactments applicable to all the union territories. There is one agent of the President in every union territory but his designation is different, though the rank is same. There is one Chief Commissioner in (1) Andaman and Nicobar Islands and (2) Chandigarh. But the designation of the same agent is Lieutenant-Governor in (1) Arunachal Pradesh, (2) Delhi, (3) Goa, Daman and Diu, (4) Mizoram and (5) Pondicherry. Again, (1) Dadra and Nagar Haveli and (2) Lakshadweep are placed under one Administrator. It is also permissible under the constitution to ask the Governor of an adjoining state to function as the agent of the President in respect of any union territory. Thus Arunachal Pradesh was formerly placed under the Governor of Assam. When the Governor is so appointed, he will directly administer the union territory and will not be aided or advised by the council of ministers of his state. The Lieutenant Governor of Goa, Daman and Diu is also simultaneously holding the post of the Administrator of Dadra and Nagar Haveli. Lakshadweep has a separate Administrator of Dadra and Nagar Haveli. Lakshadweep has a separate Administrator. This difference in designations, as already stated, is immaterial.

There is, however, an intrinsic difference introduced by an Act of the parliament of 1974 that enabled some of the union territories namely of (1) Arunachal Pradesh, (2) Goa, Daman and Diu, (3) Mizoram and (4) Pondicherry to have legislative assembly and also a council of ministers. Where there is a council of ministers, the Administrator or by whatever name he is called is bound to act on the aid and advice of the council of ministers of that union territory.

Composition of Legislative Assemblies of the Union Territories (As in March 1979)

Andaman and Nicobar Islands	—
Arunachal Pradesh	30
Chandigarh	—
Dadra and Nagar Haveli	—
Delhi	16
Goa, Daman and Diu	30
Lakshadweep	—
Mizoram	30
Pondicherry	30

The legislative assemblies in the union territories may make laws with regard to matters in the state list *i.e.* List II in the Seventh Schedule in so far as they are applicable to the union territories. Delhi has a metropolitan council and an executive council. The metropolitan council in Delhi has a right to discuss and make recommendations about matters in so far as they relate to the administration of Delhi.

**Heterogeneous designations specified by the
President in respect of different Union Territories**

- | | |
|------------------------|--|
| 1. Chief Commissioner | : Andaman and Nicobar Islands ;
Chandigarh. |
| 2. Lieutenant Governor | : Arunachal Pradesh ; Delhi ; Goa,
Daman and Diu; Mizoram and
Pondicherry. |
| 3. Administrator | : Dadra and Nagar Haveli; Lakshadweep. |
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The second difference is with regard to the legislative competency. Although the parliament has exclusive legislative powers over a union territory including matters which are in the State List, but this has difference with regard to (1) Andaman and Nicobar Islands; (2) Arunachal Pradesh; (3) Dadra and Nagar Haveli; (4) Goa, Daman and Diu; (5) Lakshadweep; (6) Mizoram and (7) Pondicherry. It is provided that the President may make laws in the nature of regulation for the peace, progress and good government of these above-noted seven union territories. This power of the President will override the Acts made by the parliament. But the President cannot exercise this function when the legislative assembly in the union territory is in existence.

Only the union territory of Delhi has a full-fledged High Court. Goa, Daman and Diu has a Judicial Commissioner. Other union territories are under the jurisdiction of the High Court of the adjoining state. Thus Chandigarh is under the Punjab and Haryana High Court ; Lakshadweep is under the jurisdiction of the Kerala High Court ; Andaman and Nicobar Islands are under the Calcutta High Court; Pondicherry is under the Madras High Court; Dadra and Nagar Haveli are under the Bombay High Court and lastly, Arunachal Pradesh and Mizoram are under the Gauhati High Court.

CHAPTER XIV

THE CENTRE-STATE RELATIONS

The constitution enacts a balance of power and division of legislative heads between the centre and the states. . . . both the union and the states have to move with circumspection and regard for the natural rights and obligations but with a speed to fulfil the hopes and aspirations of the people.

Justice D.A. Desai

(Judge of the Supreme Court of India)

In the federal sphere, it may be stated that most of the formal and informal changes which have taken place since the commencement of the constitution have been to strengthen central control over the states more and more. While the federal system, by its nature, has generated state consciousness more than under the British regime, the centre had been endeavouring more to assume control over the states not only by constitutional amendment and legislation but also by setting up extra-constitutional bodies like the Planning Commission, the National Development Council and numerous conferences.

Dr. Durga Das Basu

(Former Judge of Calcutta High Court
and constitutional commentator)

THE CENTRE-STATE RELATIONS

Constitutional status of a state in its relation with the centre

Indian constitution has a federal structure. So the powers and functions are to be distributed between the centre and the states. There are 22 states and both the union and the states derive their authority from the same constitution which divides all powers (legislative and executive) between the centre and the states. The judicial power is, however, unitary and it is very clear that there can be no conflict with regard to judicial powers. But in legislative and executive matters the powers are of two kinds—one of the union and another of the states. Let us first of all take the legislative powers. In the constitution the legislative powers are divided up into three lists—union-list, state-list and the concurrent-list. In all matters included in the union-list, the union parliament has full legislative powers; in all matters included in the state list the state legislature has full legislative powers and in all matters included in the concurrent-list, both the union and the states have common powers. But if there is a conflict between the union and the states in the concurrent-list, the union will override the state.

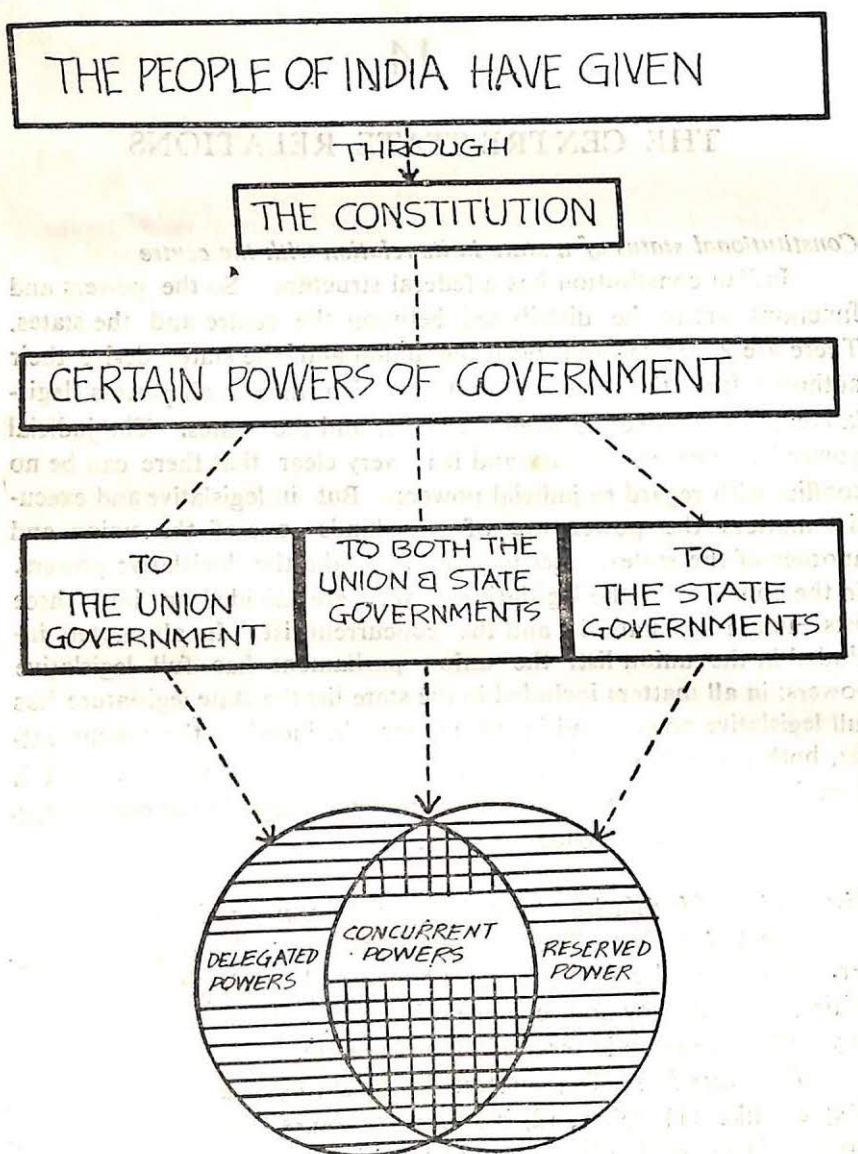
Distribution of legislative powers between the centre and the states

The Union List—The subjects in the union-list are 97 in number. They are like (1) defence, (2) external affairs, (3) religious affairs, (4) currency and coinage, (5) posts and telegraphs, (6) railways, (7) union public service commission etc.

The State List—The subjects in the state-list are 65 in number. They are like (1) police, (2) administration, (3) agriculture, (4) industry, (5) medical, (6) state public service commission etc.

The Concurrent List—The subjects in the concurrent-list are 47 in number. They are like (1) marriage, (2) criminal laws, (3) press, (4) labour welfare etc.

But the parliament can make laws even on the subjects included in the state list in the three occasions (1) If two or more states give their consent to the union government, (2) when the President



declares emergency, (3) when the council of state (*Rajya Sabha*) by two thirds voters passes a resolution to the effect that in the interest of the nation the parliament should make laws on the states.

Distribution of the executive powers

Now let us discuss the executive powers. Like the legislative powers the executive powers are also distributed between the union and the states. To make the matter simple, it may be said that the executive powers are distributed on the line of the legislative powers given to the union and the states. But one interesting difference is that in the concurrent-list the executive powers will ordinarily remain with the states.

The residuary powers—It may be that a new matter may arise which does not fall in any of the three lists. In that case the union will have both legislative and executive powers.

So, the distribution of powers between the union and the states emphatically proves that the constitution of India is both federal and unitary.

In a federal state like India the relations between the central government and the state government is of fundamental importance. As the entire governmental powers of the state must necessarily be distributed between the central government and the states, the smooth and efficient functioning of the governments at the centre and in the states must depend upon a proper balance and harmony between the central government on the one hand and the government of the states on the other. Within this framework must grow a volume of conventions as necessary elements in any scheme of legal relations which may be laid down by the Supreme Court. Our constitution has set up the union parliament and the legislature of the states between which the entire legislative powers of the country are distributed. Part XI of the constitution regulates the entire field of legislation, demarcating the respective spheres for parliamentary legislation, state legislation and laying down the law of the paramountcy of one as against the other.

Similarly, the constitution sets up the executive government for the union and the executive governments for the states. In the same manner the constitution sets up the judicial organisation in the country with the union judiciary consisting of the Supreme Court as the highest court of the country and the High Courts and the subordinate courts for the dispensation of justice in the states.

(a) In relation to each of these organs of government, namely, the legislative, the executive and judiciary, the constitution has prescribed the legal relations between the central government and the states so as to maintain the balance in the functioning of these organs at the centre and the states. It is Part XI of the constitution that lays down the legislative and the administrative relations between the states and the centre.

The primary power—It may be that a new matter may arise which does not fall in any of the three lists. In that case the union will have to legislate and executive powers.

The division of power between the union and the states is embodied in the constitution of India in both federal and unitary aspects.

The division of power between the union and the states is of fundamental importance. It is a part of the constitution which must necessarily be observed between the central government and the states, the growth of the nation and the progress of the country and in the

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CHAPTER XV

THE PRESIDENT'S RULE IN STATES AND THE UNION TERRITORIES

The Powers conferred by Article 356 have been gravely abused and if it is desired to prevent or minimise such abuse, constitutional amendments would have to be made.

H. M. Seervai
(Constitutional commentator)

It should be noted that the President may take over the government of a state without a Governor's report, if the President is independently satisfied that such a course of action should be taken as contemplated by Article 356 of the constitution.

Ashok K. Sen
(Former Law Minister of India)

THE PRESIDENT'S RULE IN STATES AND THE UNION TERRITORIES

President's Rule in a State or Union Territory—

There is a provision in the constitution that the President himself can take over the administration of a state when the Governor of that state will act as the agent of the President. This is Article 356 of the constitution. But there is no provision in the constitution that the President can exercise similar powers with regard to the central government. The President's rule comes in, if the administration of the state cannot be carried on in accordance with the provisions of the constitution. The President in this regard will act on the basis of a report submitted by the Governor of the state about the collapse of the constitutional machinery. The President is also empowered to act on the advice of the Prime Minister in which case the President need not wait for the report of the Governor. This type of President's rule may continue for a period of 12 months.

President's Rule in a State

It is one of the most responsible tasks of the Governor to report to the President whenever there is breakdown or failure of the constitutional machinery of the state. This provision is ingrained in Article 356 of the constitution, according to which the President may assume to himself "all or any of the powers vested in or exercisable by the Governor, or anybody or authority in the state other than the Legislature of the state". The President's rule will come in under two circumstances—first, when the Governor reports to the President that the Government of the said state cannot be carried out in accordance with the provision of the constitution. Secondly, when the

President is advised by the Prime Minister to dismiss the state government and bring the state under the President's rule.

In the original constitution the period of the President's rule in a state was for months. But by virtue of the Forty-fourth amendment of the constitution this period has been extended to 12 months. There is a wrong belief with many that when the President's rule is declared in any state, the state government does not exist as a separate entity. This is not true. The government of the union has a duty to see that the government of every state functions in accordance with the provisions of the constitution. And it is to discharge this constitutional obligation that the President has to take over the administration of such a state. The Presidential proclamation does not extinguish the existence of a state or a state government. Both the state and the state governments function during the Presidential rule. The change is only in respect of the mechanism. During this period the Governor acts as the agent of the state. The Governor in such a case is aided by some advisers appointed from among the senior civil servants.

The first instance occurred in 1951 when the President took over the government of the Punjab after the resignation of the Congress ministry as a result of internal differences within the ruling Congress party. The Governor reported that there was no possibility of any alternative ministry and therefore the constitutional government was impossible in the state. On the basis of that report the President acted. The next instance was in PEPSU in 1952 when a coalition ministry which had earlier replaced a Congress ministry faced difficulties in having a majority in the Legislature and the functioning constitutionally. On the basis of the Governor's report the President took over the Government of the state. The next case occurred in Andhra Pradesh in 1954 when the Congress ministry headed by Sri Prakash was defeated in the assembly. The President took over the government of the state of Andhra Pradesh on a report made by the Governor. All these states were run by the same party as in the centre. The first case where the Government in the state was taken over by the President when the state government was run by a party different from the party ruling at the centre was in Kerala in 1959 on the report of the governor that there had been various violations of constitutional provisions and it had become impossible to run the government of the state in accordance with the provisions of the constitution.

The next case occurred in Orissa in 1961 when on the resignation of the coalition ministry headed by Dr. H. K. Mahtab, when the Governor reported that a constitutional government was impossible and the President took up the government of the state. In September 1964 when no single party could prove its majority in the assembly to diffuse the stalemate the President's rule was promulgated for the second time in Kerala.

Gujarat came under the President's rule in February 1974 to meet the situation arising out of violences and disturbances against the rise in food prices. For the second time the President's rule was imposed in Gujarat on 12 March 1976 as a equal to the Janata Front's losing majority in the state assembly.

Similarly, the President's Rule was proclaimed on the state of Tamil Nadu on 31 January 1976 on the report of the Governor to the President to save the state from the alleged corrupt practices and secessionist activities.

In June 1977 when the Janata Government came to power in the Centre by a landslide victory in nine states of north India. namely, Bihar, Himachal Pradesh, Haryana, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal on the advice of the Prime Minister the President took over the administration of these nine states by dissolving the state assemblies and asking for a fresh election. The logic that actuated such a decision was that since the people of these nine states overwhelmingly voted for the Janta Party, the Congress government in those nine states had no right to remain in power without getting a fresh mandate from the people. Against this action the nine states took up the issue before the Supreme Court. But the Supreme Court refused to interfere with this functions of the executive.

When the Janata Party lost in the Lok Sabha election in April 1979 the Congress-I that came to power with overwhelming majority in the centre now dissolved the state assemblies in respect of Bihar, Gujarat, Maharashtra, Madhya Pradesh, Punjab, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh, and placed these states under the President's rule. This was Congress-I's tit for the tat of the Janata Party. This is purely a political gimic and definitely a departure from the spirit of the constitution that the President's rule will be the last resort.

It may be profitable if we make a chart of different states and

union territories and point out how many times the President's rule was imposed in these states and union territories.

A list showing the number of times the President's rule was imposed in the states and union territories.

States		Union Territories	
Andhra Pradesh	2	Andaman and Nicobar Islands	—
Assam	3	Arunachal Pradesh	1
Bihar	4	Chandigarh	—
Gujarat	4	Dadra and Nagar Haveli	—
Haryana	2	Goa, Daman and Diu	1
Himachal Pradesh	1	Lakshadweep	—
Jammu and Kashmir	1	Mizoram	2
Karnataka	2	Pondicherry	3
Kerala	7		
Madhya Pradesh	2		
Maharashtra	1		
Manipur	3		
Meghalaya	—		
Nagaland	1		
Orissa	5		
Punjab	6		
Rajasthan	3		
Sikkim	1		
Tamil Nadu	2		
Tripura	2		
Uttar Pradesh	6		
West Bengal	4		

The above chart shows that Kerala was put under the President's Rule for as many seven times. This is the highest record in this regard. Meghalaya is the only state that escaped the President's rule. As for the union territories, Pondicherry has the highest record of three times President's rule. President's rule was never imposed on the following union territories : (1) Andaman and Nicobar Islands, (2) Dadra and Nagar Haveli, (3) Chandigarh; (4) Delhi; (5) Goa, Daman and Diu and (6) Lakshadweep.

The provision relating to the imposition of the President's rule as contained in Articles 356 and 357 of the Constitution constitutes an important exception and limitation to the principle of constitutional government in the states. These provisions provide for the Central government superseding a state government and taking over the entire government of the state including the powers of the legislature by a proclamation made by the President, on being satisfied either on the basis of a report by the Governor or otherwise that the government in the state cannot be carried on in accordance with the provisions of the constitution. It may be noted that when the President took over the State of Kerala in 1959 on the report of the Governor that the constitutional government had become impossible the ministry then headed by Sri E.M.S. Namboodripad still commanded a majority support in the state legislature. It is quite clear that the Governor has to act on his own judgment in sending his report to the President under Article 356 (1) of the constitution. But the Governor must exercise his independent power *bona fide* and there must be sufficient material to support his report.

CHAPTER XVI

JUSTICE, LAW AND PEACE

In our constitutional system the central and most characteristic feature is the concept of the rule of law which means, in the present context of the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person bring the appropriate action in the competent court.

Justice V. Ramaswami
(Former Judge of the Supreme Court of India)

Courts must take equal care to ensure that the innocent are not convicted and guilty are not acquitted.

Y.V. Chandrachud (Chief Justice of the Supreme Court of India) in *State of West Bengal v. Shew Mangal Singh*
A.I.R. 1981 S.C. 1917.

For over a hundred years distinguished jurists and judges in India have, passing themselves upon the theories of English common law and statutes, evolved doctrines of their own suited to the peculiar need and environment of India. So has been built up on the basis of the principles of English law the fabric of Modern Indian law is unmistakably Indian in its outlook and operation.

Late M.C. Setalvad
(Former Attorney-General of India)

Whatever the rights and wrongs of the various judgments of the Supreme Court involving interpretation of the constitution, there is no gainsaying the fact that some of these in the past have betrayed a conservative approach to economic legislation and a few have been lent some credence to the charge that the court fancies itself as a third legislative chamber.

Sham Lal (Political analyst), 'Crumbling Pillars of State',
The Illustrated Weekly of India, 1-7 November 1981, p.6.

*Judiciary should be Committed to the constitution and none else.
No Country could survive, if the judiciary was not independent.
But judiciary here had a tendency to commit suicide.*

V.R. Krishna Iyer

Former Judge, Supreme Court of India,

(Speech on the occasion of

All India Lawyers Union Convention,

New Delhi, 13 March, 1982)

Justice V. Ramaswami

(Former Judge of the Supreme Court of India)

Courts must take equal care to ensure that the innocent are not
convicted and rights are not restricted.

*Justice V. Ramaswami (C.J.) Justice of the Supreme Court of
India in State of West Bengal v. Anwar Hossain Khan
AIR 1981 S.C. 1917.*

For over a hundred years distinguished jurists and judges in India
have been using the law as the basis of English common
law and custom, established doctrine of their own added to the
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Whatever the rights and wrongs of the various judgments of the
Supreme Court involving interpretation of the constitution, there
is no doubt that the fact that some of these in the past have
been a constructive approach to economic legislation and a
desire to bring about changes in the country that the court
has been a great legislative chamber.

*Sham Lal (Political Analyst), Crumbling Pillars of State,
The Illustrated Weekly of India, 1-7 November 1981, p. 6.*

JUSTICE, LAW AND PEACE

Justice in India

The constitution guarantees protection of life and liberty to the citizens and also provides adequate safeguards against the arbitrary deprivation thereof by the state. The adoption of the republican constitution in 1950 did not dispute the continuity of the existing laws and the unified structures of the courts. According to Article 372 of the constitution, all laws which were in force immediately before the commencement of the constitution shall continue until amended or repealed by the competent authority. The unity and the uniformity of the judicial structure was preserved by placing such areas of law like criminal law and procedure, civil procedure, wills, succession, transfer of property other than agricultural lands, contracts, registration of deeds and documents, evidence etc in the current list.

We may note the difference between the system of justice in India and that in England. In England the parliament is sovereign and there is no right of judicial review. So the judges in England cannot pronounce upon the validity of any law passed by the parliament of the country. They have to accept it and judicially interpret it and give effect to it. In India the position is quite different. In our country the parliament is not sovereign. So the judges have the right to adjudicate upon the validity of any legislation passed by the parliament or the legislatures and set it aside, if it contravenes any provision of the constitution including the fundamental rights. In this regard, the Indian system corresponds to that of the United States of America.

The position is rightly clarified by Mr. M.C. Setalvad. According to Mr. Setalvad, we have in truth not the supremacy of the parliament or the courts, but the supremacy of the constitution. The debates of the constituent assembly which preceded the framing of the constitution of India, like the debates in the American controversy convention, show how acute was the controversy over the wisdom of permitting the legislative will to be questioned by the judiciary. The makers of the Indian constitution chose to subject the decision of the legislature to a close and impartial scrutiny by the judiciary in the fullest confidence that the judiciary world, in making their determination, be guided solely by the interest of the nation.¹

Sources of law in India. The principal sources of law in India are the constitution statutes or legislations, customary law and case law. The parliament, the legislature of the state and the legislature of the union territories are the makers of these statutes. In addition, there is a mass of laws known as subordinate legislation in the form of rules, regulations and bye-laws which are enacted by the central and state governments, local authorities, like the municipal corporations, municipalities, village panchayats and other local bodies who are delegated such powers by the union parliament, state legislature or the union territory legislature.

Judicial decisions of the courts of law like the Supreme Court and the High Courts are another source of law. The law declared by the Supreme Court is binding on all courts within the territory of India. The local customs and conventions which are not against any statute or against morality are also recognised by the courts while administering justice.

Laws made by the parliament may extend throughout or any part of India. Conversely, laws by the state legislature generally apply within the territorial jurisdiction of the state.

Law and Justice — Legal structure and procedure

One of the unique features of the Indian constitution is that in spite of the adoption of a federal system and the existence of central acts and the state acts in their respective jurisdiction, it has generally provided for a single integrated system of the courts to administer both the union and the state laws.

1. M.C. Setalvad, *The Common Laws in India*, 1960, London p 187.

At the apex of the entire judicial system stands the Supreme Court of India with a High Court for each state or group of state and under the High Courts there is a hierarchy of subordinate courts.

There is generally separation of the judiciary from the executive. The *Panchayat* courts also generally function in some states under the various names like *Nyaya Panchayat*, *Panchayat Adalat*, *Gram Kuchahari* etc., to decide civil and criminal disputes of petty and local nature. The different state laws provides for different kinds of jurisdiction of the courts.

The country is divided into judicial districts presided over by a district and sessions judge who is the principal civil court of original jurisdiction and can also try all offences including those punishable with death. He is the highest judicial authority in a district. Below him there are courts of civil jurisdiction, known variously in different states as *Munsiffs*, *Sub-Judges*, *Civil Judges* and the like.

The structure and functions of the subordinate courts are more or less uniform throughout the country. A state is divided into a number of districts each under the jurisdiction of a principal civil court presided over by a District Judge. Sometimes he is assisted by Additional District Judges, Subordinate to a District Judge is a hierarchy of different grades of civil courts.

Although the main work of the civil courts is to hear suits, they have jurisdiction over the several matters such as arbitration, guardianship, marriage, divorce and probate. Quasi-judicial tribunals distinct from the ordinary courts have also been established under certain special acts for determining some disputes of civil rights. Every High Court exercises the power of superintendence over all courts that fall within its territorial jurisdiction.

The organisation and procedure of the criminal courts are regulated by the Code of Criminal Procedure, 1973 that came into force with effect from 1 April 1974. The code provides separate sets of magistrate for the discharge of the executive and judicial functions. Both the executive and the judicial magistrates with regard to their judicial functions are subject to the superintendence and control of the High Court. For every district there is a District Magistrate with a number of subordinate magistrates under him. These magistrates deal with the problems relating to the maintenance of law and order and the prevention of crime.

On the judicial side, the judicial hierarchy of the magistrates is composed of the Chief Judicial Magistrate at the district level and

the judicial magistrates of the first class and the second class. Broadly speaking, the magisterial functions which are essentially judicial in nature are the business of the judicial magistrates. In metropolitan areas with a population of more than 10 lakhs there are Metropolitan Magistrates who have wider powers for quicker disposal of the cases. As on 31 March 1977, the subordinate courts functioning in the country at district level were: 1,928 District/Additional District Judges, Session Judges and Assistant Session Judges/Subordinate Judges and 4,054 Munsiffs/Magistrates.

UNION JUDICIARY—THE SUPREME COURT—COMPOSITION AND FUNCTION

Composition and functions of the Supreme Court of India

The Supreme Court of India is the highest judgment-making body in the country. The judgment of the Supreme Court is final and supreme.

There is a Chief Justice and seventeen other judges. The appointment of a judge of the Supreme Court is made by the President after consultation with the Chief Justice and in some cases with the Chief Justice of the High Court. A judge of the Supreme Court holds office until he attains the age of 65 years. But he may leave the post by resignation. The constitution seeks to ensure the independence of the Supreme Court judges by providing a steel-procedure for the removal of a judge. The membership of the Supreme Court as on 1 July 1981 was:

1. Y. V. Chandrachud. (Chief Justice)
2. P. N. Bhagwati,
3. A. C. Gupta.
4. S. Murtaza Fazal Ali.
5. V. D. Tulzapurkar.
6. D. A. Desai.
7. R. S. Pathak.
8. O. Chinnappa Reddy.
9. A. P. Sen.
10. E. S. Venkataramiah.
11. Baharul Islam.
12. A. Varadarajan.
13. A. N. Sen.
14. V. B. Eradi.
15. R. B. Misra.

The Supreme Court consists of the Chief Justice and not more than 17 other judges. They are appointed by the President. They retire from their post after 65 years of age. But a judge can leave his job by resignation or he may be removed by the President, if his decision is approved of by at least two-thirds members of both the houses of the parliament. A judge can be removed only on ground of "proved incapacity or misbehaviour". In order to become a judge of the Supreme Court a citizen of India must have any one of the following qualifications:—

(i) an expert in law.

or (ii) a judge of a High Court.

or (iii) an advocate of a High Court for at least 10 years.

All the judges of the Supreme Court get Rs. 4000/- per mensem and the Chief Justice gets Rs. 5000/-.

Chief Justice of India¹

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|-----------------------------|--|
| 1. Harilal J. Kania | 14 August 1947 to 5 November 1951. |
| 2. M. Patanjali Sastri | 7 November 1951 to 3 January 1954. |
| 3. Mehr Chand Mahajan | 4 January 1954 to 22 December 1954. |
| 4. Bijan Kumar Mukherjee | 23 December 1954 to 31 January 1956. |
| 5. Sudhi Ranjan Das | 5 September 1955 to 31 October 1955. |
| | & |
| | 1 December 1955 to 30 September 1959. |
| 6. Bhuaneshwar Prasad Sinha | 1 October 1959 to 31 January 1964. |
| 7. Dr. P. B. Gajendragadkar | 1 February 1964 to 15 March 1966. |
| 8. A. K. Sarkar | 16 March 1966 to 29 June 1966. |
| 9. K. Subba Rao | 30 June 1966 to 10 April 1967. |
| 10. K. N. Wanchoo | 12 April 1967 to 23 April 1967 (Acting) 24 April 1967 to 24 February 1968. |
| 11. M. H. Hidayatullah | 25 February 1968 to 16 December 1970. |
| 12. J. C. Shah | 17 December 1970 to 21 January 1971. |
| 13. S. M. Sikri | 22 January 1971 to 25 April 1973. |
| 14. A. N. Ray | 26 April 1973 to 28 January 1977. |
| 15. M. H. Beg | 29 January 1977 to 21 February 1978. |
| 16. Y. V. Chandrachud | 22 February 1978 |

1. By the courtesy of the Registrar, Supreme Court of India.

Provision exists for the appointment of a judge of a High Court as an ad-hoc judge of the Supreme Court and the retired judges of the High Court or Supreme Court to act as judges of the Supreme Court.

Functions of the Supreme Court

The function of the Supreme Court can be broadly divided into two heads—(i) giving judgment in original cases and (ii) giving judgment in case of appeals from a lower Court.

Oath administered to a Judge of the Supreme Court of India

I.....having been appointed Chief Justice or Judge of the Supreme Court of India do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and intergrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear and favour, affection or ill-will and that I will uphold the Constitution and the laws.

(i) *Giving judgment in original cases*—This can be again divided up into three classes—(a) to give judgment in all cases of disputes between the central government and state government or between two or more states governments.

(b) to give judgment in all cases of disputes between different state governments.

(c) to give orders to the proper authorities if the fundamental rights of the citizens are not honoured by any government or any authority.

(ii) *Giving judgment in case of appeal from a lower court*—This can be divided up into two classes—(a) civil and (b) criminal.

The Supreme Court has other function like advising the President on the matters referred to it by the President under Article 143 of the constitution. This is called the advisory function of the Supreme Court.

The Supreme Court is the interpreter of the constitution and the protector of the fundamental rights of the citizens. Although the Supreme Court of India has been criticised for its lack of uniformity in the judgment, yet it is a must for the interpretation of the constitution. According to Mr. N. A. Palkhivala : "So as long as the constitution endures, the Supreme Court must exist". The most eloquent tribute to the Supreme Court of India is perhaps paid by Mr. M. C. Setalvad : "As the final interpreter of the constitution whether in the sphere of fundamental rights or in respect of questions arising between the union and the states or the whole body of statute and customary law in the country, the influence of the Supreme Court in the process of moulding the nation in the social and economic sphere cannot be exaggerated".

(a) *Civil cases*—In a Civil case if the dispute involves substantial question of law, it can be appealed to the Supreme Court.

(b) *Criminal cases*—In all criminal cases where the sentence is of death sentence by a lower Court or where the dispute is very complicated the Supreme Court will give its own judgment.

The Supreme Court has also a very wide appellate jurisdiction over all courts and tribunals in India. Appeals also lie to the Supreme Court under the Representation of the People Act, the Advocates Act, the Contempt of Courts Act, etc. The Supreme Court has power to direct the transfer of any case from one High Court to another High Court.

So, we see that the Supreme Court is the guardian of the constitution, the highest civil and criminal court of the country. The powers of the Supreme Court of India are so great that it is admitted by all that the Supreme Court of India has powers more than any court anywhere in the world.

The High Court and the Subordinate Courts

Every State has a High Court which stands at the head of the state's judicial administration. There are 18 High Courts in the country. Two of them have jurisdiction over more than one state. They are Gauhati High Court and Punjab and Haryana High Court. Among the Union Territories Delhi alone has a High Court of its own. Goa, Daman and Diu has a Judicial Commissioner, while the other Union Territories come under the jurisdiction of several state High Courts.

A Judge of a High Court holds the office till the age of 62 years. There is one Chief Justice and a number of other Judges for each High Court. The number of Judges in a High Court is not fixed. A Judge of a High Court is appointed by the President of India, on consultation with the Chief Justice of India, the Governor of that State and also the Chief Justice of that High Court. A Judge holds the post until he retires on attaining the age of 62 years.

None but a citizen of India can be appointed High Court Judge. The other essential requisite is that he must have had a least ten years experience as an Advocate.

Like the Judge of the Supreme Court a High Court Judge can be removed from the post by a resolution approved of by the majority of total membership of each house and a two-third majority of members present and voting in each house. Again, the only ground on which a judge can be removed is "Proved misbehaviour and incapacity." A Judge also can resign the post by a written desire addressed to the President. The Chief Justice of the High Court acts as the Governor when there is a temporary vacancy in the post of the Governor of that state.

Oath administered to Judge of a High Court

I.....having been appointed Chief Justice or Judge of the High Court at or of.....do swear in the name of God or solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

The jurisdiction of the High Court is two-fold—the original jurisdiction and appellate jurisdiction.

Original jurisdiction—As for the original jurisdiction, it is the High Court that alone can decide some matters like the election dispute, company matters etc. Like the Supreme Court the High Court has power to issue writs. This power is given to the High Court under Article 226 and 227 of the Constitution. The High Court's

writ jurisdiction is wider than the Supreme Court's because the Supreme Court can issue writ only in respect of fundamental rights, the High Court can do so in respect of the fundamental rights and other matters. In this regard it may be stated that only three High Courts—namely the Calcutta High Court, Bombay High Court and the Madras High Court have original jurisdiction for civil suits if the value of the suit exceeds Rs. 2,000/-.

Appellate Jurisdiction—In the appellate side, the High Court hears the appeal preferred against the judgments of the lower civil and criminal courts.

Jurisdiction and Seat of High Courts

No. Name	Year of establishment	Territorial Jurisdiction	Seat of the Court
1. Allahabad	1866	Uttar Pradesh	Allhabad
2. Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
3. Bombay	1861	Maharashtra and Dadra and Nagar Haveli	Bombay (Bench at Nagpur) Calcutta
4. Calcutta	1861	West Bengal and Andaman and Nicobar Islands	
5. Delhi	1966	Delhi	Delhi
6. Gauhati	1972	Assam, Manipur, Meghalaya, Tripura, Mizoram and Aruna- chal Pradesh	Gauhati (Temporary Benches at Agartala, Imphal, Kohima and Shillong)
7. Gujarat	1960	Gujarat	Ahmedabad
8. Himachal Pradesh	1971	Himachal Pradesh	Simla
9. Jammu and Kashmir	1928	Jammu and Kashmir	Srinagar and Jammu
10. Karnataka	1884	Karnataka	Bangalore

11. Kerala	1956	Kerala and Lakshadweep	Ernakulam
12. Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
13. Madras	1861	Tamil Nadu and Pondicherry	Madras
14. Orissa	1948	Orissa	Cuttack
15. Patna	1916	Bihar	Patna (Bench at Ranchi).
16. Punjab and Haryana	1947	Punjab, Haryana and Chandigarh	Chandigarh
17. Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
18. Sikkim	1975	Sikkim	Gangtok

Although a Session Judge can award death sentence to an accused on the charge of murder, this sentence will not be effective until it is confirmed by the High Court.

Below the High Court are subordinate criminal courts and subordinate civil courts. For the convenience of our study we may divide the subordinate courts under two wings—subordinate civil courts and subordinate criminal courts.

Subordinate Civil Courts

The civil courts have jurisdiction to decide the civil suits in various terms like commercial contracts, wills, land ownership, property disputes etc. In every district there is a district court presided over by the District Judge and also subordinate civil courts and Munsiff Courts which are under subordinate civil Judges and Munsifs respectively. The jurisdiction of the civil courts varies from the status of the judicial officers. The higher the rank of the judge will mean his higher jurisdiction. The ranking is also decided by the amount of money involved in a dispute. So it has been a general practice for the district court to decide on the complicated cases involving the big business firms or banks in the town. On the other hand, the Munsiff Court deals with minor cases of disputes relating to property or like nature in rural areas.

Subordinate criminal courts

Below the High Court the criminal courts come under two heads—Sessions Courts and the Magistrates' Courts.

Session Courts—In every district there is one Sessions Judge who is competent to award sentences including the death sentence. However, a death sentence passed by the Session Judge will have to be confirmed by the High Court.

Magistrates' Courts—The Magistrates are classified into three ranks. The highest among them in rank is the Chief Judicial Magistrate who may impose a sentence of imprisonment upto seven years. While a First Class Magistrate can impose a sentence of imprisonment upto three years or a fine not exceeding Rs. 5000/-, a Second Class Magistrate can award a sentence of one year or a fine not exceeding Rs. 3,000/-.

In the cities of Calcutta, Bombay, Madras and Ahmedabad there are some Magistrates of special rank called the Chief Metropolitan Magistrates and Metropolitan Magistrates. Their powers are analogous with the Chief Judicial Magistrates and First Class Magistrates respectively. A Metropolitan Magistrate can be appointed by the state government in any city which has a population of over one million.

Reforms in the Criminal Procedure—Some drastic changes in the criminal procedure have been introduced by the new Code of Criminal Procedure, 1973. The new Code brings in the separation of the judiciary from the executive on an all-India basis and made several radical changes to expedite the disposal of cases, to improve efficiency, to prevent abuses and to afford relief to the poorer sections of the community.

One important change is the abolition of the system of appointing honourary Magistrates or Justices of the Peace. What has been provided instead is a provision for the appointment of retired or serving officers of government as Special Magistrates to try special categories of petty cases. The jury system has also been done away with.

According to the new code every person arrested with or without warrant shall be informed of the grounds of his arrest and in bailable cases on his right to be released on bail. A person can be kept in custody for 90 days where the investigation relates to offences punishable with death, imprisonment for life or for imprisonment for a term of not less than 10 years. The scope of bail has been made

more liberal. A new feature in bail is anticipatory bail i.e., bail before arrest in certain cases.

The abolition of the committal proceedings in session cases is an important change in the criminal procedure. The provision to hear the accused not only on guilt but on sentence also is another landmark in criminology.

The new code provides that a copy of the First Information Report (*Ejahaar*) will be supplied to the person who gives the information. If a Police Officer refuses to record the information, the aggrieved person can send it by post to the Superintendent of Police who will look into the matter.

The period of detention in jail during remand shall be counted against the sentence of imprisonment ultimately awarded in the case.

Legal aid at the expense of the state has been made compulsory in all session cases, if the accused is too poor to engage a counsel at his expense. Power has been given to the state government to extent this facility by notification for other cases.

Perhaps the most important thing is bringing out on a uniform pattern the complete separation of the Judiciary from the executive which is a directive principle of the state policy. This has been implemented in all the states and union territories except Jammu and Kashmir, Nagaland and tribal areas.

Law should serve the interest of the common people

In India we have had fights between the parliament and the judiciary right from the time the constitution came into effect. The cases of *Dorai Rajan* (195), *Kameshwar Prasad* (1952) and the *Kerala Education Bill* (1958) show how the Supreme Court was in two minds about the respective places of the fundamental rights and the directive principles of the state policy in the constitution. It was only in 1967 in the *Golak Nath case* that the Supreme Court held that they were at par with each other. In 1973 in the case of *Kesavananda Bharati* the Supreme Court held that the parliament could not infringe the basic structure of the constitution but the Supreme Court did not explain what the basic structure was.

The public opinion gradually veered round to dispute the ground for an unseemly fight between the parliament and the judiciary. The people know that laws are made for them, not to please the judiciary. They do not care much for the concepts like personal liberty and freedom of speech but are interested in getting economic

freedom from the clutch of the landlords and money lenders and in being able to buy the necessities of life at lower prices. This change in the public opinion has had a sobering effect and the Supreme Court in the *Minerva Mills case* (1980) expressed a definite change in outlook. In that case the Supreme Court suggested among other things that the legislative acts should be validated to the extent they are in consonance with the directive principles for being in the public interest, such acts will not be infringing the basic structures. Thus it is the public opinion which gives validity to all judicial acts. It is hoped that our judiciary will realise it in time. The judiciary should be closer to the public opinion than the bar which cannot claim monopoly of popular opinion, because after all only a small section of population goes to court. This is well said by Justice M.H. Beg in the *case of Kesavananda Bharati*: "The good of the mass of citizens of our country is the supreme law embodied in our constitution prefaced as it is by the preamble or the 'key' which puts 'justice, social, economic and political' as the first of the four objectives of the constitution by means of which 'the people of India' constituted 'a sovereign democratic republic'.

The function of the judiciary is to correct the illegality of the actions of the executive or the legislature. The importance of having an independent judiciary to whom citizens can go for redress against the excesses of the executive may be illustrated by one example of the state of Maharashtra. There was an order of the Police Commissioner of Greater Bombay which prevented and assembly of five or more persons without the permission of the Police Commissioner, irrespective of the question whether the meeting was public or private, irrespective of the question whether the place where it was intended to be held and irrespective of the purpose of the meeting. The net result was that tea or dinner parties, social gatherings, funeral assemblies, college lectures and countless other meetings of five persons would inevitably constitute millions of breaches of that order. Since this order was shockingly unacceptable to any reasoning, the Bombay High Court on 18 December 1975 struck down that order as invalid. This is an example to explain how the courts in India come to the rescue of the citizens in giving them protection from the wrongful actions of the executive and the legislature.

Let us conclude the topic with the prophetic note of Late M.C. Setalvad : with The evergrowing expansion of India legal thought there is bound to be a greater interplay between legal minds in India

and else where in the world of Anglo & Saxon jurisprudence. As judges and lawyers, in India report freely to English decisions so may, in course of time, the English courts recognise Indian contribution to legal thought and principles.¹

Legal Aid to the poor

The Legal Aid Scheme is a recent development in India. The legal system is becoming complex day by day, and the people with low income are finding it difficult to meet the cost of litigation. In order to enable them to get legal aid and advice, some schemes under the name of Legal Aid Schemes have been started in some states. The principle of equal justice and free legal aid is to be found in Article 39A of the Constitution as one of the Directive principles of state policy. Following this directive the government constituted a committee with Justice P.N. Bhagwati, a judge of the Supreme Court as chairman and Justice V.R. Krishna Iyer a Supreme Judge as member in May 1976 to go into the matter. The committee has submitted its final report on National Juridicare, "Equal Justice--Justice". The report was presented to the parliament in December 1977. Pending formulation of the scheme, a token provision of one lakh rupees has been provided for the purpose in the budget during 1979-80.

The Attorney-General for India

The Attorney-General for India is appointed by the President. He holds office during the pleasure of the President. He must be a person who has the qualifications to be appointed a judge of the Supreme Court. His function is to give advice to the government of India upon such legal matters and he is to perform such other duties of legal character as may be referred to or assigned to him by the President. He can appear in any court of India and even take part in the proceedings of the parliament without the right to vote. In the discharge of his functions the Attorney-General is assisted by a Solicitor-General and two Additional Solicitors-General.

1. M.C. Setalvad, *The Common Law in India*, 1960, London P. 227.

The Advocate-General for the States

Like the Attorney-General who is the legal adviser to the union government, the constitution provides for a legal adviser to the state government known as the Advocate-General for the state. He is appointed by the Governor and he holds office during his pleasure. To be appointed as Advocate-General, a person should have the same qualifications as would make him eligible for appointment as a Judge of the High Court. The Advocate-General will receive such remuneration as the Governor may determine.

It is the duty of the Advocate-General to give advice to the state government on legal matters referred to him as well as to perform certain other duties of a legal character which are assigned to him from time to time. In the discharge of these duties he is entitled to appear before any court of law within the state or address the state legislature as and when required.

The Police System

The police is entrusted with the responsibility of enforcing law and order. Its main function is to prevent crime and remove disorder. Law is a state subject. The head of the police force in a state is the Inspector-General of Police. The territorial division of the state for the purpose of police administration is called a range which is assigned to a Deputy Inspector-General of Police. The highest police officer in the district is the Superintendent of Police. Recruitment to the senior posts from Assistant Superintendent of Police upwards is on all India basis. From the constable to the Deputy Superintendent of Police is in the state cadre.

The police set-up in Bombay, Calcutta, Delhi and Madras is different. In such cities the police force is under a Police Commissioner who is given powers like that of a Magistrate.

The Intelligence Bureau

The central government by various means assists the state government through its agencies in the field of law and order, security, investigation of crimes, prevention of crimes etc. The two main agencies of the central government are the Intelligence Bureau and the Central Bureau of Investigation. The main work of the Intelligence Bureau is to collect and transmit intelligence that con-

cerns the national security and other matters affecting the security of the country. The Intelligence Bureau keeps informed all the departments of the central government for this purpose. It also co-ordinates the activities of the special branches of the criminal investigation and intelligence departments in the states. The Intelligence Bureau is under the control of a Director.

The Central Bureau of Investigation

This agency was created in 1963 to investigate into important cases concerning public servants in the employ of the central government and its corporate undertakings. It also takes up the cases that involve investigation of inter-state or international level.

Border Security Force

The Border Security Force is a para-military force like the Central Reserve Police. It is given the following assignments (1) to promote a sense of security among the people living in the border ; (2) to prevent transborder crimes, unauthorised entry into or exit from the territory of India; and (3) to prevent smuggling and any other illegal activities. During the war it has a special role to play to work under the direct control of the army. In case of civil disturbance, the Border Security Force comes of civil disturbance, the Border Security Force comes to assist the civil administration. Its headquarters is at Delhi and it is headed by a Director-General.

Central Reserve Police Force

The other paramilitary force is the Central Reserve Police Force. During the British period it was called "Crown Representative's Police" that was raised in 1939. After independence its name was changed into Central Reserve Police. Later on the word "Force" was added to its name. Its headquarters is at Delhi and it is under one Director-General.

Its primary work is to come to the assistance of the states in maintaining law and order throughout the country. During war or external threat this para-military force stands by the army.

Home Guards and Civil Defence

Both the Home Guards and Civil Defence are Voluntary organisations meant for rendering services to the people particularly during an emergency like air-raid, outbreak of fire, famine, flood etc.

They come to assist the police in such cases. The field of action of the Civil Defence is the border areas and vulnerable cities. The primary object of the Civil Defence is to save life, minimise damages to property and to maintain continuity of production during any emergency.

Both these voluntary organisations have approximately five lakh members. They rendered great services during the national emergencies. During peace time the Home Guards helped the police in the maintenance of law and order, essential services, traffic control, guard duty, night patrolling, besides emergency reliefs and resoration of the operations during natural calamities. At present they are also taking part in the socio-economic developmental activities.

CHAPTER XVII

LOCAL SELF-GOVERNMENT

The greater the power of the Panchayats, the better for the people.

—Mahatma Gandhi

A large number of laws have been enacted to implement the directive in Article 40 of the Constitution to organise village Panchayats and endow them with powers of self-government. It is stated that the number of village Panchayats (over 2 millions) covers 98 per cent of the rural population in the country. Though the constitution and function of the panchayats vary according to the term of the different state acts, generally speaking, the panchayats, elected by the entire adult population in the villages, have been endowed with powers of civic administration such as medical relief, maintenance of village road, streets, tanks and wells, provision of primary education, sanitation and the like. Besides civic functions; the panchayats also exercise judicial powers like the old union courts and benches. The judicial wing of a panchayat that has a civic jurisdiction to try minor offences punishable with moderate fines.

Dr. Durga Das Basu

(Former Judge of Calcutta High Court and constitutional commentator)

LOCAL SELF-GOVERNMENT

What is Local Self-Government ?

The concept of local self-government is based on the theory that the democracy must naturally grow from the grass-root levels. The union government or the state government can discharge the major functions in the union or the state level. But the union government has no time to look after the task of cleansing the streets or looking after the cremation ground or switching off the street lights or controlling the outbreak a disease like cholera or malaria. These functions being very close to the people are to be taken care of by some authorities very close to the people. These authorities are called local self-government. This is not an invention of the makers of the constitution. As a matter of fact, such governments were to be found in ancient India particularly under the Cholas in south India. The ancient system has just been modernised under the present set-up. These local self-governments are of two types—urban and rural. In the urban side, we find the corporations, municipalities and cantonment boards. The village self-government is a three-tier system—the *Panchayats* (or village boards), *Panchayat Samities* (or the development block) and the *Zila Parishads* (or the district council).

We may study the subject under two heads—(1) the Urban administration and (2) the village administrations.

The urban administration

India has as many as 115 cities each of which has a population of over one lakh. In urban areas there are corporations in cities and municipalities in towns. In addition, there are cantonment boards in military townships and port trusts in port areas. Although the cities

are under the general control of the state government, they are left with a considerable measure of autonomy. The corporation in a city is governed by council that consist of the members elected by the adult voters. From among the elected members a person is chosen as president who is called the Mayor. Every corporation has a Commissioner who is appointed by the state government. He is called the Chief Executive Officer and he is directly responsible for the entire administration of the corporation. He is to execute the orders of the Mayor and implement the decision of the Council.

Municipality is the most common form of administration in the towns of India. The establishment of the municipalities is regulated by the laws passed by the state legislature. The municipalities are of various sizes depending upon the population of the town. The number of members range from 20 to 100. As in the case of the cities in the towns also an officer is appointed by the state government and his designation is Administrative Officer. The functions of the corporation and the municipalities are two-fold—(1) obligatory or compulsory functions and (2) optional function.

The following are the obligatory functions of the municipalities :

1. Construction and maintenance of roads.
2. Removal of garbage.
3. Regulation of dangerous and offensive trades.
4. Provision of water supply.
5. Management of hospitals and dispensaries.
6. Provision of a fire brigade.
7. Administration of public markets.
8. Abatement of public nuisance.
9. Provisions of street lighting.
10. Provisions of schools.

The following are the optional functions of the municipalities :

1. Development of public parks and gardens.
2. Establishment and management of museums.
3. Reclamation of unhealthy localities.
4. Provision of public transport services.
5. Holding of fairs and exhibitions.
6. Supply of electricity.

Administration in military cantonments and port trust :—

Cantonment Board—Cantonment boards have been set up in cantonment areas to provide civil amenities and welfare services to the people living there. These boards are autonomous bodies subject to supervision and control by GOC-in-charge of the command and the general government. The number of elected and nominated members is kept equal in these boards varying from 1 to 7. These boards have the power of taxation which is their main source of revenue. The budget estimates prepared by the boards are scrutinised and sanctioned by the GOC-in-charge of the command. All over India there are 62 Cantonments.

The Port Trust—The Port Trust is the other self-governing institution that grow out generally in port cities. The cantonment board discharges all the functions that are usually the functions of a municipal committee.

Village Administrations

Mahatma Gandhi, the father of the nation wanted the revival of the *Panchayat Raj* that had been in existence in ancient India. Etymologically, the word *panchayat* means a council of five. But in legal import the *panchayat* may consist of more than five persons. In legal parlance, the *panchayat* means "a body constituted for the local administration of a village". Following the wishes of Gandhiji the makers of the Indian constitution laid great emphasis on the creation and effective working of the *panchayats*. Thus one of the directives of the directive principles of state policy, namely Article 40 of the Constitution runs as follows :

"The state shall take steps to organise village panchayats and to endow them with such powers and authority as may be necessary to enable them to function as units of self-government".

The system of *Panchayat Raj* was introduced in 1959. It is a three-tier structure of local self-government at the village, block and district levels. The states are, however, free to make changes in the structure to suit the local conditions. All the bodies of the *Panchayat Raj* are organically linked up. The backward classes, women and co-operative societies get priorities in representation in the *Panchayat Raj* bodies.

The *panchayats* are responsible for agricultural production, rural industries, medical relief, maternity and child welfare, manage-

ment of common grazing grounds, maintenance of village roads, streets, tanks and wells and provision for sanitary and drainage. In some places the *panchayats* also look after the primary education, maintenance of village records and the collection of land revenue. They raise funds by levying tax on houses and lands, fairs and festivals and sale of goods.

The *panchayat* provides a speedy and inexpensive system of justice to the villagers through a court called *Nyaya* (judicial) *Panchayats* in some states. The name of this court is the village courts in some states.

The village administration may be studied under three heads—
(1). *The Panchayats* (2). *The Panchayat Samiti* (3). *The Zila Parishads*.

The Panchayats

The institution of a *panchayat* has a total number of membership that ranges between 5 to 15. A member of the *panchayat* is elected by the adult persons in the village who are eligible voters for the purpose of election of the respective state legislative assembly. The tenure of the *panchayat* is determined by a state law in that respect. Its tenure is either for three years or four years.

From among the members of a *panchayat* a man is chosen as the President and another as Vice-President. The President of the *panchayat* is to convene the meetings of the *panchayat* and to discharge all duties and functions as required by the state law for that purpose.

There are a good number of government employees to assist the carrying out of the functions of the *panchayat*. As we have seen in the cases of the corporations in a city, the *panchayat* also has twofold functions—some obligatory and some optional. Following are the obligatory functions of the *panchayat* :

1. Construction and maintenance of village roads.
2. Maintenance of drains.
3. Lighting of village roads.
4. Provision of public latrines and cleaning of those latrines.
5. Cleaning of streets and removal of rubbish.
6. Maintenance of burial and cremation grounds.
7. The sinking and maintenance of the wells.
8. Preventive and remedial measures connected with any epidemic or with malaria.

The following are some of the optional functions of the *panchayat* :

1. Planting and preservation of trees on the sides of public roads.
2. Opening and maintenance of public markets.
3. Establishment and maintenance of dispensaries.
4. Opening and maintenance of public libraries and reading rooms.
5. Establishment and maintenance of play-grounds and centres of physical cultures.
6. Opening and maintenance of cart-stands and halting places.
7. Holding of agricultural shows and fairs.
8. Opening and maintenance of slaughter houses.

As for the sources of revenue for the *panchayats* we may mention the taxes on property and cess on land revenue. The *panchayats* also levy taxes on the vehicles (but not motor vehicles) that are in use in the village.

The Panchayat Samiti

Above the *panchayat* but below the *Zila Parishad* is the *Panchayat Samiti* that consists of about 100 villages which are otherwise called the blocks. The members of the *Panchayat Samiti* include the head of the village *panchayats* within its jurisdiction, a number of co-opted members of the scheduled castes, representatives of the co-operative societies and members of the state and union legislature from that area. From among the members the Chairman is elected. But the Secretary of the *Panchayat Samiti* is a government servant of the designation of the Block Development Officer.

The *Panchayat Samiti* has the following functions :

1. Execution of the community development programme.
2. Improvement of public health and sanitation.
3. Supervising the works of the *panchayats*.
4. Preparation of plan for the general development of the block.

Unlike the *Panchayat*, the *Panchayat Samiti* has no independent sources of income. It is the state government that grants money for the development works within the block. But as the money is sanc-

tioned for particular purposes the *samiti* is left with little scope to have independent scheme. It can only see that the funds are properly utilised.

The Zila Parishad

A state is split up into several units called the district or *zila*. The local self-government at the district level is under a *Zila Parishad* which consists of the Presidents of the *Panchayat Samiti*, the elected members of the parliament and the state legislatures in that district and some representatives of the scheduled castes. From among the members of the *Zila Parishad* the president is elected. The state government appoints two officers who are taken from the government service. They are designated as the Chief Executive Officer and a Deputy Chief Executive Officer. The latter in the *ex-officio* Secretary of the *Zila Parishad*.

The following are the functions of the *Zila Parishad* :

1. Establishment and maintenance of hospitals, dispensaries and child welfare centres.
2. Establishment and maintenance of schools.
3. Promotion of local industries.
4. Construction of district roads.
5. Supplying water for the district.
6. Organising fairs and festivals.

The *Zila Parishad* has sources of revenue of its own by levying certain taxes. It also gets grants from the state government and a portion of the land cess and other local cesses and taxes.

CHAPTER XVIII

ELECTIONS AND POLITICAL PARTIES

The principle of free and fair election is an essential postulate of democracy and is a basic structure of the constitution.

—Justice H.R. Khanna
(Judge, Supreme Court of India)

in Indira Nehru Gandhi v Raj Narain, AIR 1975 S.C. 2299)

Bringing down the Janata Government held by Mr. Morarji Desai and helping to set up the Charan Singh Ministry was a sad and shameful end to a chapter in our history which began gloriously and held out hopes of a government devoted to the welfare of the governed.

—H.M. Seervai
(Constitutional commentator)

The Sixth General Election brought about a revolution through the ballot. It proved to the whole world that India was politically still a democracy where the citizens freely choose their rulers. In a truly democratic matter, the ruling Congress Party which held the reins of power for over thirty years was swept off the ground by the newly formed Janata Party and its allies.

—Professor M.V. Pylee
(Vice-Chancellor, Cochin University)

Six hundred and twenty million people ; The majority of them are illiterate and live far into the interior of India, but 620 million decided to show Mrs. Indira Gandhi that they had enough. The results of India's last general election astonished the world and devastated the lives of Mrs. Gandhi and her family. What was even stronger than the result was the fact that Mrs. Gandhi had held an honest election.

—Mrs. Rani Dube
(Former Producer of the Hindi Service of the
British Broadcasting Corporation)

Election is a long, elaborate and complicated process.

—Justice P.K. Goswami

(Judge Supreme Court of India)

Mohinder Singh Gill v Chief Election Commissioner,
AIR 1978 SC 851

Not surprisingly, our political parties have lost whatever ideological moorings they had and have become handmaidens of power-hungry politicians and prisoners of personality cults. As a result, no party today commands countrywide influence.

—Nanaji Deshmukh

(Former General Secretary of the Janata Party)

The Illustrated Weekly of India, 17-23 January 1982.

Every party, trying to cope with the changing balance of political forces, has lost its self-confidence. While the Janata and the Lok Dal have been reduced to more rumps, even the Bharatiya Janata has been unable so far to acquire a national image and live down the communal stigma attaching to the Jana Sangha which makes it doubly hard for it to woo the minorities. As for the CPM, though it has been able to consolidate its base in West Bengal and retain it in Kerala, it has made little headway elsewhere. Meanwhile the Congress itself, though it is the only party with a national base, suffers from a terrible weakness. It has a supreme boss in Mrs Gandhi but no second or third line of credible leadership since everyone in the party owes his position to her and has no independent base of his own. Thus the very source of the party's present strength carries the germ of its future disintegration.

—Sham Lal (Political analyst)

'Crumbling Pillars of State', The Illustrated Weekly of India, November 1—7, 1981, p. 6

—Mrs. Kamal Khand
(Former Producer of the Hindi Service of the
British Broadcasting Corporation)

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ELECTIONS AND POLITICAL PARTIES

Elections and their system

The success of a democracy largely depends on a fair election of the members to the legislature. The fact that a detailed mechanism of the election is incorporated in the body of the constitution shows the anxiety of the makers of the constitution to safeguard this political right as an integral part of the constitution itself. The result was that the drafting committee of the constitution made special provisions of a character and embodied them as a separate chapter of the constitution.

The Election Commission and its functions

The constitution provides for election commission for superintendence, directions, control and preparation of the electoral roll for and the conduct of all elections to parliament and the state legislatures and of elections to the office of the President and Vice-President. The election commission deals with the following matters :

1. Election of President of India.
2. Election of the Vice-President of India.
3. Composition of the two houses of the union parliament.
4. Qualifications of the members of the parliament.
5. Composition of the state legislature.
6. Qualifications of the members of the state legislature.
7. Duration of the parliament and the state legislature.
8. Reservation of seats in the house of the people and the state assemblies for the scheduled castes and the scheduled tribes and;
9. The determination of the population for the purposes of election.

The parliament is given the supreme power to make legislation on all matters relating to elections including the elections to state legislatures (Article 327). The state is also given some limited powers of legislation in respect of elections (Article 328). But the state cannot make any legislation that may conflict with the law made by the union parliament. Pursuant to Article 327 the parliament made two major acts—the first was the Representation of People Act, 1950 and the second is the Representation of the People Act, 1951. The first act laid down the qualifications of voters and matters concerning the preparation of the electoral rolls. It also made provisions for the procedure for delimitation of constituencies and allocated the number of seats in the parliament to the states and also fixed the number of seats in the state legislature. The Representation of People Act of 1951 provides for the actual conduct of elections, the poll, election disputes, by elections etc. By an amendment in the act a major change in the preparation of the electoral roll has been enacted. Formerly, there were two electoral rolls—one for the parliament and another for the state legislature. The Amendment has introduced a common electoral roll and thereby did away with the duplication of the work.

One General Electoral Roll

The creation of one general electoral roll is a big achievement under the constitution. Its importance can be realised if we know what type of electoral roll was there before the constitutional measure came in. Under the pressure of communal politics, separate electoral rolls were there for each constituency. The Muslims all over India had a separate electoral roll and they voted only for candidates who stood for election from the constituency reserved for the Muslims. Article 325 of the constitution finally abandoned the separate electoral rolls. The result is that the people of India irrespective of their religion, race, caste or sex came to belong to one general electoral roll in every territorial constituency for election. This put an end to the un-natural system that prevailed in India for a few decades. Thus the Hindus, the Muslims, the Christians or the Sikhs came to be all composite political community—"we the people of India".

Universal Adult Suffrage

Adult franchise which means that every person—man or woman who is not less than twenty-one years of age has the right to vote in the election to the house of the people and the state legislature and this is a basic feature of Indian constitution.

The grounds on which a citizen may be disqualified to exercise franchise are : (1) non-residence, (2) unsoundness of mind, (3) crime and (4) corrupt or illegal practice. The universal adult suffrage is considered as the "fountain-spring of India democracy", because it swept away at one stroke all the obsolete and undemocratic qualifications prescribed to be eligible for voting such as certain property, income, status, title, educational qualifications and so on that had been in existence prior to the coming of the constitution.

A uniform all-India electoral roll and the universal adult suffrage have produced far-reaching democratic effects. This will be clear, if we know the earlier position. Under the Government of India Act, 1919 only three per cent of the total population of India had the right to vote. The Government of India Act of 1935 made it ten per cent. But today every citizen has the right to vote. Moreover, the abolition of the communal electorate system that had split up the Indian society into communal compartments is another significant stride in the march of democracy.

The Electoral Machinery

A basic postulate in a democracy is holding of fair and free election of the people's representatives to the legislative bodies. In other words, the election must be held in a completely non-partisan way. So the provision has been made in the constitution to ensure that the party in power cannot influence the governmental machinery to win the election. It is for this reason that the conduct of election is entrusted to an independent body called the election commission. The revision of the electoral roll can be done only by the election commission and not by any other authority. A person alleging corruption or other mean practices resorted to by the elected candidate in influencing the voters can approach the High Court and also the Supreme Court.

The election commission comprises one Chief Election Commissioner and as many Election Commissioners as the President may think necessary. They are all appointed by the President. The independence of the election commission is ensured by the fact that the Chief Election Commissioner can be removed only on the grounds and in accordance with the rigid procedure for and by which a Judge of the Supreme Court can be removed.

At the state-level there is one Chief Electoral Officer who is a senior officer of the State government. At the district level the machinery varies from state to state. In some states there is an whole-time



Queuing up to cast their votes



A wizened old woman of 95 casting her vote at a polling booth in Rajasthan on 3 January 1980

District Election Officer in every district with a nucleus of his own which is augmented during the election time. The practice in some states is that an officer belonging to the normal administrative set-up in the district is placed in charge of the election work with a nucleus of his own. In some other states, the election is conducted by the normal administrative machinery. It will be better if there is a uniform system everywhere.

As for the preparation and maintenance of the electoral rolls of a constituency, there is a permanent machinery consisting of the election commission, the Chief Electoral Officer, and the Electoral Registration Officer of the constituency. In every assembly constituency there is an Electoral Registration Officer whose duty is to prepare and annually revise the electoral roll for that constituency. He is assisted in this regard by an officer designated as the Assistant Electoral Registration Officer.

In each parliamentary and assembly constituency there is a Returning Officer who is appointed by the election commission. He is an officer of the government. For assisting him some other government officers are appointed as Assistant Returning Officers.

On the election days a large number of Presiding and Polling Officers conduct the poll. For every polling station there is one Presiding Officer and a few Polling Officers. There are police men and other staff that are engaged during the polling days.

POLITICAL PARTIES IN INDIA

Since election is related to political parties, we may take up the different political parties in India and discuss their aims and objectives.

The Indian National Congress (I)—The Indian National Congress is the most important political party in India and it is through the organised activism of this party under the leadership of Mahatma Gandhi that India won her freedom from the British rule. In 1963 the Congress raised the slogan of “democratic socialism”. In November 1969 the party was split into two. The break-away section of the Congress came to be known as the Congress (O) or the Organisation Congress, while the main party was renamed Congress (R) or Congress Rightist under the leadership of Mrs Indira Gandhi. In 1977 the Congress (O) dissolved itself to merge with the Janata Party. The Congress (R) became unpopular because of the imposition of internal

emergency by Mrs Indira Gandhi and the party was routed in the election of 1977, when the Janata party came to power. After that there was a further split in the Congress (R) which got divided into two wings Congress (I) under the leadership of Mrs Indira Gandhi and Congress (U) under the leadership of Mr. Devraj Urs. But the Congress (I) proved successful and came to power in the election of 1979, where Congress (U) could not fare well. The Congress (I) since then claims to be the lone successor of the former Indian National Congress. The aim of the Congress (I) is to realise the ideal of socialistic pattern of society by peaceful and constitutional means, prevention of oppression on the minorities and cherishing the values of secularism, democracy and socialism. Its foreign policy is the continuation of Jawaharlal Nehru's policy of non-alignment.

The Congress (U)—We have already noticed the history of the Congress (U). Here we shall only deal with the ideology of the party. It aims at the well-being and advancement of the people and establishment in the country a socialist state based on parliamentary democracy. Its foreign policy is world peace and non-alignment.

The Communist Party of India (Commonly known as the CPI)—The party was founded in 1924. It aims at establishing a socialist state in the country and ending all forms of exploitation, abolishing the emergency provisions from the constitution and more autonomy for the states. It believes in the supremacy of the parliament of India. Its foreign policy is one of friendship with the socialistic countries, particularly with Russia.

The Communist Party (Marxist) (commonly known as the CPM)—A section of the members of Communist Party of India who could not subscribe to the policy of allegiance to Soviet Russia broke away from that party and formed a new organisation. The party does not believe in co-operation with the Congress (I) and wants a total "people's democratic revolution" as against the "national democratic revolution" espoused by the Communist Party of India (the CPI).

The Communist Party of India (Marxist Leninist) (commonly known as the CPI (ML))—The party was organised by an extreme section of the CPM. It follows the Chinese method of peasant-based guerilla warfare as the only means of establishing a Communist regime in India. It does not believe in parliamentary democracy. At the moment the party is plagued with many factions, some of which wish to reenter into the parliamentary political system.

The Janata Party—The party came into formal organisation on 1 May 1977. It is a combination of the previous Congress (Organisation), Jana Sangha, Samjukta Socialist Party, Praja Socialist Party, Swatantra Bharatiya Lok Dal etc. The party strongly believes in the Gandhian principles of social organisation and India's democratic traditions. In 1977 the Janata Party swept into power with a landslide victory in the Lok Sabha election.

The Revolutionary Socialist Party of India—It preaches the Marxist doctrines and wants to establish a socialist state in India through revolution. It is organised on the principles of democratic socialism but is opposed to any kind of allegiance to Russia or China with regard to foreign policy.

The Forward Bloc—This party came into existence in 1938 when Netaji Subhash Chandra Bose sought to rally the leftists against the Congress orthodoxy. It believes in direct action and rejects all kinds of compromises. At present the objective of the party is to establish a socialist state in India and it wants that India should completely delink herself from the Commonwealth.

The Peasants and Workers Party—The objective of this party is "severance of all connections with British imperialism, abolition of landlordism without compensation, confiscation of foreign capital invested in banks and industries in India."

The Akali Dal—It is a politico-religious party of a section of the Sikhs. It wants to maintain a separate identity of the Sikh community and the establishment within Indian union of a *Punjabi Suba* as homeland for the Sikhs. It wants that Gurumukhi language should be the state language of the state of Punjab.

The Dravida Munnetra Kazhagam—(commonly known as the DMK)—It is a party of south India. Its members by and large belong to the non-Brahmins and it is opposed to the superiority of the Brahmins. The party got absolute majority in the Tamil Nadu Legislative Assembly in the election of 1967 and 1971.

The All-India Anna Dravida Munnetra Kazhagam (commonly known as the Anna DMK)—This is a splinter group of the DMK. It was formed under the leadership of Mr. M. G. Ramachandran. It wants to implement the ideology of the Late Annadurai, the founding father of this party.

Allocation of Seats in Two Houses of Parliament and Party Position in Lok Sabha

(As on 1 March 1980)

Lok Sabha										
No. of seats in		Rajya Sabha	Seats	Congress (I)	Janata (S)	CPI (M)	Janata	DMK	Other Parties attached	Total
1	2	3	4	5	6	7	8	9	10	11
STATES										
Andhra Pradesh	18	42	41	—	—	—	—	1 ²	—	42
Assam	7	14	2	—	—	—	—	—	—	2
Bihar	22	54	29	5	—	8	—	8 ³	3	(12 vacant) 53
Gujarat	11	26	25	—	—	—	1	—	—	(1 vacant) 26
Haryana	5	10	5	4	—	—	1	—	—	10

Himachal Pradesh	3	4	3	—	—	—	—	3
Jammu & Kashmir	4	6	1	—	—	—	4 ⁴	5
								(1 vacant)
Karnataka	12	28	27	—	—	1	—	28
Kerala	9	20	5	—	6	—	7 ⁵	20
Madhya Pradesh	16	40	35	—	—	4	—	40
Maharashtra	19	48	39	—	—	8	1 ⁶	48
Manipur	1	2	1	—	—	—	1 ⁷	2
Meghalaya	1	2	1	—	—	—	—	1
								(1 vacant)
Nagaland	1	13	1	—	—	—	—	13
Orissa	10	21	20	1	—	—	—	21
Punjab	7	13	11	—	—	—	—	12
Rajasthan	10	25	18	2	—	4	1 ⁸	25
Sikkim	13	1	—	—	—	—	—	1
Tamil Nadu	18	39	20	—	—	—	3 ⁹	39
Tripura	1	2	—	—	2	—	—	2
Utar Pradesh	34	85	51	30	—	3	1 ¹⁰	85
West Bengal	16	42	4	—	28	—	10 ¹¹	42

⁵Congress (U)—3; CPI—2; Muslim League—2

⁶Congress (U)—1

⁷CPI—1

⁸Congress (U)—1

⁹AIADMK-2; Muslim League—1

¹⁰CPI—1

¹¹Revolutionary Socialist Party—4; Forward Block—3; CPI—3

¹²Congress (U)—1

Existing Strength of Legislative Assemblies and Party Position

(As on 1 June 1980)

States/Union Territory	Total Strength	Janata (JP)	BJP	Janata (S)	INC(I)	INC(U)	CPI	CPM	Other Parties	Independent	Vacant
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh	294	7	3	9	251	3	6	8	3	3	1
2. Assam %	126	28	—	4	36	16	6	11	13	8	4
3. Bihar	324	13	21	42	167	14	23	6	16	19	3
4. Gujarat	182	21	9	1	140	—	—	—	—	10	1
5. Haryana	90	15	—	23	48	—	—	—	—	1	3
6. Himachal Pradesh	68	1	24	1	34	—	—	—	—	4	3
7. Jammu & Kashmir*	76	11	—	2	7	1	—	—	52	1	2
8. Karnataka	224	18	—	—	161	30	3	—	2	7	3
9. Kerala	140	5	—	—	17	22	17	34	44	1	—
10. Madhya Pradesh	320	2	60	1	246	—	2	—	1	8	—

11. Maharashtra	288	17	14	—	186	47	2	2	8	12	—
12. Manipur	60	4	—	—	37	6	5	1	4	3	—
13. Meghalaya	60	1	—	—	—	—	—	—	55	2	2
14. Nagaland	60	—	—	—	24	—	—	—	35	—	1
15. Orissa	147	3	—	13	117	2	4	—	—	7	1
16. Punjab	117	—	1	—	63	—	9	5	37	2	—
17. Rajasthan	200	8	32	7	133	6	1	1	—	12	—
18. Sikkim	32	—	—	—	—	—	—	—	31	1	—
19. Tamil Nadu	234	2	—	—	30	—	10	11	180	1	—
20. Tripura	60	—	—	—	—	—	—	50	7	1	2
21. Uttar Pradesh	425	4	11	59	306	13	7	—	4	17	4
22. West Bengal	294	23	—	5	18	3	2	174	60	4	5
23. Arunachal Pradesh	30	—	—	—	20	—	—	—	8	2	—
24. Delhi	56	—	—	—	Metropolitan Council dissolved on 21-3-1980.						
25. Goa, Daman & Diu@	30	—	—	—	22	—	—	—	7	1	—
26. Mizoram	30	2	—	—	—	—	—	—	28	—	—
27. Pondicherry	30	3	—	—	10	—	—	1	16	—	—
Total	3997	188	175	167	2073	163	97	305	611	127	35

@Latest party position not received.

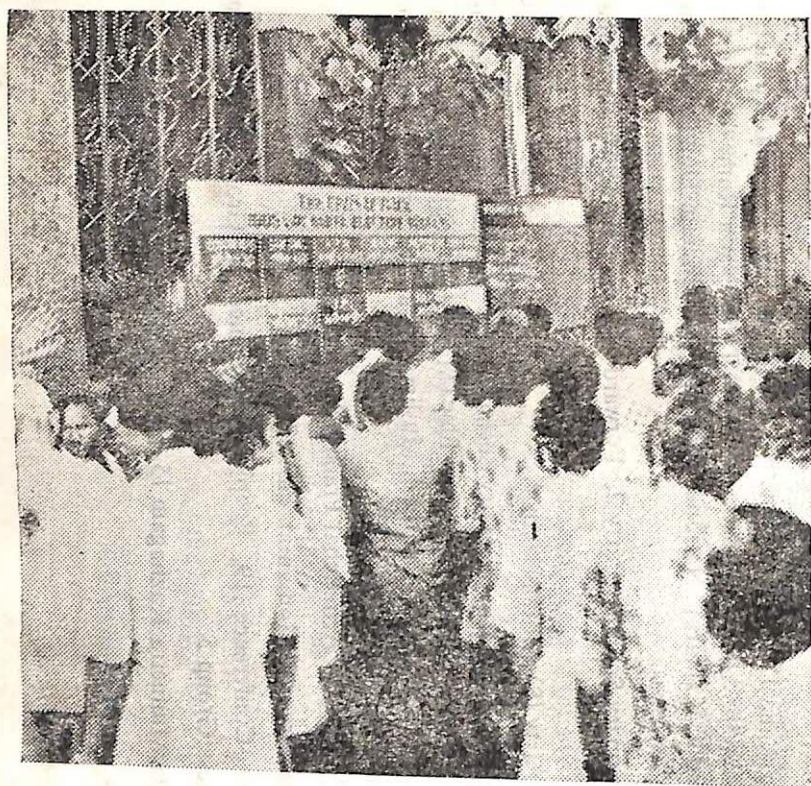
*Excluding 24 seats ear-marked for Pakistan occupied territory.

%Assam Legislative Assembly under suspension w.e.f. 12-12-1979.

Other Parties referred to in Col. (10) included—

- | | |
|--------------------|--|
| 1. Andhra Pradesh | Majlis Ittehad-ul-Muslimeen 3. |
| 2. Assam | Plains Tribals Council of Assam 4, Revolutionary Communist Party of India 4, Assam Janata Vidhayani Dal 5. |
| 3. Bihar | Forward Bloc 1, Jharkhand Mukti Morcha 13, Janata (S)—RJ 1, Marxist Co-ordination 1. |
| 4. Jammu & Kashmir | National Conference 48, Jamaat-E-Islami 1, Inqalabi National Conference 2, J&K People's Conference 1. |
| 5. Karnataka | Muslim League 1, Republican Party of India 1. |
| 6. Kerala | Muslim League 14, Kerala Congress (M) 8, Revolutionary Socialist Party 6, Kerala Congress (J) 6, All India Muslim League 5, National Democratic Party 3, Kerala Congress (P) 1, Praja Socialist Party 1. |
| 7. Madhya Pradesh | Republic Party of India (Khobragade) 1. |
| 8. Maharashtra | Peasant's & Workers Party 8. |
| 9. Manipur | Manipur People's Party 4. |
| 10. Meghalaya | All Party Hill Leaders Conference 20, Public Demands Implementation Convention 2, United Meghalaya Parliamentary Democratic Forum 33. |
| 11. Nagaland | Naga National Democratic Party 35. |
| 12. Punjab | Shiromani Akali Dal 37. |

13. Sikkim
Sikkim Janata Parishad 22, Sikkim Congress (R) 8, Sikkim Prajatantra Congress 1.
14. Tamil Nadu
All India Anna Dravida Munnetra Kazhagam 129, Dravida Munnetra Kazhagam 38, All India Forward Bloc 3, Tamil Nadu Kamraj Congress 3, Gandhi Kamaraj National Congress 6, Indian Union Muslim League 1.
15. Tripura
Revolutionary Socialist Party 2, Forward Bloc 1, Tripura Upajati Juba Samiti 4.
16. Uttar Pradesh
Janata Party (S)—Raj Narain 4.
17. West Bengal
Forward Bloc 27, Revolutionary Socialist Party 20, Revolutionary Communist Party of India 3, Forward Bloc (Marxist) 3, Biplabi Bangla Congress 1, Socialist Unity Centre 4, Muslim League 1, Communist Party of India (Marxist Leninist) 1.
18. Arunachal Pradesh
People's Party of Arunachal Pradesh 8.
19. Goa, Daman & Diu
Maharashtrawadi Gomantak Party 7.
20. Mizoram
People's Conference 19, People's Conference 'B' Group 4, Mizoram Congress Group 5.
21. Pondicherry
Dravida Munnetra Kazhagam 15, Indian Union Muslim League 1.



*A crowd of Bombay eagerly watching the results of 1960
Lok Sabha Elections*

By the courtesy of the Illustrated Weekly of India Bombay

The Muslim League—During the last phase of the British rule in India this party occupied a prominent position next only to the Indian National Congress. But now it is a very insignificant party with its field of operation confined to the state of Kerala only. It aims at the security of the Muslim community and protection of the interest of the minorities. It wants communal harmony and elevation of the status of Urdu language and to see that India follows a foreign policy of friendship with the Muslim countries of the world.

The Lok Dal—The other name of the Lok Dal is the Janata (S). It is a break-away from the Janata Party. The prime architects

of that party were Chaudhari Charan Singh and Mr Raj Narain. Its aim is to bring a clean and efficient administration, protection of the interests of the Harijans, minorites and weaker sections particularly the peasants in the villages who should be the owners of the land tilled by them. It believes in a foreign policy of non-alignment where the national interests will be the main concern of the government of India.

The Bharatiya Jana Sangh—This is another break-away of the Janata party. It is a revival of the earlier Jana Sangh under new leadership of Balraj Madhok and Atal Behari Vajpayee. It wants reestablishment of undivided India (*Akhanda Bharat*) based on ancient Indian culture. Its foreign policy is building up a strong India to withstand the aggressions of Pakistan and China and also the leadership of India in the establishment of world peace.

CHAPTER XIX

EMERGENCY PROVISIONS IN THE CONSTITUTION

And we have lived through the emergency which saw how far the government could go in amending the constitution, attenuating liberties and showing its displeasure to the judiciary.

—S. Nihal Singh
(Journalist and political analyst)

For the first time after the constitution came into force, the emergency was proclaimed on the ground of internal disturbance and it was made a cloak for gross abuse of political power as is clear from the luminous of the Shah Commission Reports. Not only were the basic freedoms of our constitution almost extinguished during the emergency by executive and legislative action, but they were also gravely impaired by the 39th and the 42nd Amendments.

—H.M. Seervai
(Constitutional commentator)

EMERGENCY PROVISIONS IN THE CONSTITUTION

Emergency means abnormal condition. In an emergency there is a departure from the normal condition. When the situation is abnormal the government will also be abnormal. The founder fathers of the constitution foresaw the possibility of such an abnormal condition. To meet such a situation the constitution has provided some extra-ordinary machinery.

There are three kinds of emergency—(1) The national emergency (2) The constitutional emergency and (3) The financial emergency.

The National emergency

A national emergency means the existence of a condition whereby the security of India or any part thereof is threatened by any of the following three circumstances—(1) war, (2) external aggression and (3) armed rebellion. The emergency can be proclaimed by the President of India alone. It is not necessary that any of the three conditions must exist. Even if there is probability of any of such a condition, this will be sufficient for declaration of an emergency. But the President cannot proclaim emergency unless there is suggestion by the council of ministers of the union government in writing to the President. The national emergency must also be approved by both the houses of the parliament within one month of the date of proclamation of the emergency. If it is approved of by both the houses of the parliament, it can continue for six months from the date of such approval. The national emergency can obtain all over India or a part thereof.

There were two occasions when the emergency was proclaimed on the ground of war or external aggressions. The first proclamation was made on 26 October 1962 when China attacked India. The second occasion was on 3 December 1971 when Pakistan declared war on India.

There was only one occasion when emergency was declared on 25 June 1975 on account of "internal disturbance". The words "internal disturbance" are now replaced by "armed rebellion" in the constitution.

Effects of the Proclamation of National Emergency

Following will be the result of national emergency.

1. During the emergency the parliament can make law on those subjects which are enumerated in the state list.

2. In order to implement the law passed by the parliament the union executive will be given additional powers. Thus during the period of the national emergency the union legislature and the union executive will become more powerful compared with the power of the state legislature and the state executive.

3. The President will have power to change the allocation of funds between the Union and the States.

4. The moment the national emergency is proclaimed, the six freedoms guaranteed under Article 19 will automatically come to an end. But the President may by a separate order take away the right to approach the court for the enforcement of the fundamental rights.

The constitutional emergency

This type of emergency occurs only in the states or union territories and not with regard to the union government. When the machinery of a state government cannot function in accordance with the provisions of the constitution the administration of the State Government is carried on by the President through the Governor of the State. The President will declare this type of emergency under any of the two conditions—(1) The Council of Ministers headed by the Prime Minister recommends for President's rule in the state concerned. (2) The Governor of the State concerned sends a report to the President inviting the President's rule.

This type of emergency took place on various occasions. We have noticed them in connection with the administration of the State

and Union Territories. There is thus no use for duplicating the same here.

Financial emergency

This is a provision for austerity in the expenditure of the government. We know in history that the mighty French Revolution took place in 1789, because there was dearth of fund for the government. We also know that finance lubricates the wheels of the governmental machinery. So a provision has been made that to meet a financial crisis the President can make a cut in the salary of the government employees. The President can reserve the money bill or any financial bills after they are passed by the state legislature also.

This type of emergency will remain in force for two months unless approved by both the houses of parliament. There was no occasion in our constitutional journey to proclaim the financial emergency.

CHAPTER XX

OFFICIAL LANGUAGE

Language is the bond of civic life, the key to knowledge, the origin of truth and reason.

Language is the mother of all disputes, the nature of all law suits, the source of division and war.

—Aesop's Fables

The provisions of our constitution relating to language have raised no serious questions of legal interpretation, but they have raised serious political problem.

—H.M. Seervai
(Constitutional commentator)

Languages offered a special problem to the makers of the Constitution simply because of the plurality of languages used by the vast population of 356 million. It is somewhat bewildering to think that no less than 1,652 spoken languages, including 63 non-Indian languages, are current in this subcontinent. The makers of the constitution had, therefore, to select some of these languages as the recognised medium of official communication in order to save the country from a hopeless confusion.

—Dr. Durga Das Basu
(Former Judge of the Calcutta High Court
and constitutional commentator)

OFFICIAL LANGUAGE

Official Language as given in the constitution

A Constitution is not supposed to lay down elaborate provisions about the official languages. It is usually not a subject matter of any Constitution. This is so, because in most countries, a single language is employed as the common medium of expression of the entire population or at least an overwhelming majority. But there are few constitutions where special provision is enacted with regard to the official language. Indian constitution belongs to the latter category. The Eighth Schedule of the constitution specify fifteen languages as official languages. These are quoted below :—

Official Languages

- | | |
|---------------|---------------|
| 1. Assamese | 8. Marathi. |
| 2. Bengali. | 9. Oriya. |
| 3. Gujarati. | 10. Punjabi. |
| 4. Hindi. | 11. Sanskrit. |
| 5. Kannada. | 12. Sindhi. |
| 6. Kashmiri. | 13. Tamil. |
| 7. Malayalam. | 14. Telegu. |
| | 15. Urdu. |
-

Percentage of population speaking different official languages

We may append below another table to know the number of people speaking the language and their percentage in relation to

entire India population. These figures are based on the 1951, 1961 and 1971 census.

Language	Number of people speaking (in Millions)			Percentage of total population
	1951	1961	1971	
Assamese	5	6	9	1.4
Bengali	25	31	45	7.4
Gujarati	16	20	26	4.8
Hindi, Urdu,) Hindustani) and Punjabi)	150	183	209	42.5
Kannada	14	17	22	3.5
Malayalam	13	16	21	3.4
Marathi	27	33	42	7.3
Oriya	13	16	22	3.5
Tamil	27	33	38	7.0
Telegu	33	40	45	7.4
Others	30	40	70	11.8
Total	356	435	549	100

The above table shows the perplexing linguistic problem of India. Despite such perplexities and bitterness that exist in the country on the language problem, it must be admitted that the adoption of the provisions dealing with the official languages by the constitution marked a triumph of Indian nationalism and national unity. It proves that even in the face of the most acute differences because of the deep-seated linguistic sentiments, the citizens of India as a whole who have the good of the nation at heart can find out a solution of this vexed problem. This realisation preserves the unity and integrity of the nation.

Position of English vis-a-vis Hindi

The official language of the union government is Hindi in *devanagari* script. It was, however, provided in the constitution that English shall continue to be used for all official purposes of the union till 25 January 1965. But afterwards it was realised that a complete change-over to Hindi within that period was not possible. So the law was changed. According to the changed law English will continue as the official language side by side with Hindi beyond the earlier stipulated deadline i.e. 25 January 1965. English would also be the language in addition to Hindi for the transaction of business in the parliament. English would continue to be the official language for communication between the union and a state that has not adopted Hindi as the official language. A communication made by a Hindi-speaking state with a non-Hindi speaking state shall employ Hindi language with an English translation thereof.

A separate department of official language was created in June 1975 to look after the work relating to the official language and to co-ordinate the activities of various ministries and departments.

Place of Hindi and its allied language Urdu in the national life of India

Since Hindi is considered the only language that can replace English as the official language of India, it may not be out of place to make a little digression to assess the place of Hindi and its akin language Urdu.

Hindi with its various branches is considered the fourth most important language of the world after Chinese, English and Russian. It is the spoken language in Bihar, Uttar Pradesh, Madhya Pradesh, Rajasthan, Delhi, Himachal Pradesh and Haryana. Since the geographical extent of the language is very wide, the masses use more than dozen allied local dialects, each one of which is equally important and very rich in literary folk traditions.

Urdu and Hindi are basically the same language in points of structure, grammar and syntax and there is a considerable fund of vocabulary common to both. But there are some points of differences as well between these two languages. In the first place, Hindi is written in *Devanagari* script, but Urdu is written in Persian and Arabic script. In the second place, owing to various historical and sociological factors Hindi has to be associated with the Hindus and Urdu with the Muslims. In the third place, the Urdu writers drew

upon the Arabic and the Persian languages for expanding their vocabulary, but the Hindi writers do it from Sanskrit. Uru originated from the dialects spoken around the city of Delhi. It became the spoken language of the Muslims when they settled in Delhi. In north India specially in Bihar, Delhi, Punjab and Uttar Pradesh, the use of Urdu is widespread, though it is spoken by a minority chiefly living in towns.

CHAPTER XXI

SPECIAL PROVISIONS FOR SCHEDULED CASTES AND SCHEDULED TRIBES & ADMINISTRATION OF SCHEDULED AREAS AND TRIBAL AREAS

The reservation policy would continue till such time as there was complete equality, opportunity and every individual enjoyed the fruits of democracy.

—**Indira Gandhi**, (Prime Minister of India)

The Statesman, Calcutta, 3 May 1981

A caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens.

—**Justice K.N. Wanchoo**

(Former Chief Justice of India)

The main motive for special treatment was given slightly differently. There were two dangers from which protection was necessary—(a) the danger of exploitation by more advanced persons specially the money-lenders involving loss of their lands and (b) their exposure to normal laws which were unsuitable for such simple folks.

—**M. Hidayatullah**

(Former Chief Justice of India)

in The Fifth and Sixth Schedules to the Constitution of India, Gauhati, 1979, p. 43

Many regions now forming part of the country had never known democratic government. A large part of the backward population of the country and some minorities required special treatment and protection. The rights and interests of the divergent population in varying stages of development could be adequately safeguarded only by provisions guaranteeing their rights.

—**M.C. Setalvad**

(Former Attorney-General of India)

SPECIAL PROVISIONS FOR SCHEDULED CASTE AND SCHEDULED TRIBES

&

ADMINISTRATION OF SCHEDULED AREAS AND TRIBAL AREAS

A. Special Provisions for Scheduled Castes and Scheduled Tribes

It is one of the basic postulates of the preamble of the constitution to ensure all-round development of the backward classes, since without their improvement there cannot be "justice, social and economic and political". One of the Directive principles, namely Article 46 of the constitution provides that the state shall promote with special care the educational and economic interests of the weaker sections of the people, particularly of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all kinds of exploitations. Of the backward classes, a vast majority is called the Scheduled Castes and Scheduled Tribes in the constitution. The term 'Scheduled Caste' or "Scheduled Tribe" is not defined in the constitution. The President of India is given the power and duty to prepare a list of the Scheduled Castes and Scheduled Tribes in each State in consultation with the Governor of the respective State. This list, however, can be changed or revised by the Parliament.

The measures as laid down in the constitution of India for the development of the Scheduled Castes and Scheduled Tribes may be studied under two heads—1. Permanent measures and 2. Temporary measures. We shall now discuss them one by one.

1. Permanent measures in the constitution for the development of the Scheduled Castes and Scheduled Tribes

For the protection of the property of a member of the Scheduled Caste community the state government is given the power to make suitable laws.

(1) In the appointments in the services of the central government or the state government the members of the Scheduled Castes and the Scheduled Tribes are given preference by way of keeping some posts reserved for the members of the Scheduled Castes and the Scheduled Tribes.

(2) To look after the welfare of the Scheduled Castes and the Scheduled Tribes a special officer is appointed by the President. He makes an enquiry into all matters relating to the constitutional safeguards provided for the Scheduled Castes and the Scheduled Tribes. He submits his report to the President from time to time.

(3) The President also appoints a commission to report on the administration of the Scheduled Areas and on the welfare of the Scheduled Tribes in the states. As a matter of fact, two central advisory boards—one for the Scheduled Castes and the other for the Scheduled Tribes have been constituted. These boards are to formulate and review the working of the scheme for the welfare of the Scheduled Castes and the Scheduled Tribes and to keep the government of India informed of the position from time to time.

(4) The state government is under an obligation to carry out all directions given by the central government for the purpose of the welfare of the Scheduled Castes and Scheduled Tribes.

(5) In order to enable the state government to implement the scheme of the central government regarding the welfare of the Scheduled Castes and the Scheduled Tribes, the central government gives grants-in-aid to the state governments.

(6) Four states Andhra Pradesh, Bihar, Madhya Pradesh and Orissa are under an obligation to appoint a minister to look after the Scheduled Castes and other Backward Classes.

(7) Special provision has been made to administer the areas inhabited by the Scheduled tribes. (This has been discussed in subsequent pages in this chapter).

(8) The advantages given to the members of the Scheduled Castes and Scheduled Tribes cannot be challenged by other people on the ground that the other people are deprived of the advantages

to which the members of the Scheduled Castes and the Scheduled Tribes are entitled.

2. Temporary measures in the constitution for the development of the Scheduled Castes and Scheduled Tribes

(1) Some Seats are reserved in the House of the People for —(a) the Scheduled Castes; (b) the Scheduled Tribes except the scheduled tribes in the Tribal Areas of Assam and (c) the Scheduled Tribes in the autonomous districts of Assam.

(2) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes except the Scheduled Tribes in the Tribal Areas of Assam in the Legislative Assembly of every state. But such reservations are temporary. This will discontinue after forty years of the commencement of the constitution. In other words, this system of reservation will cease with effect from January 1990.

Provisions for other Backward Classes

The makers of the constitution were not content by laying down some provisions for ameliorating the conditions of the Scheduled Castes and the Scheduled Tribes only. The founding fathers were aware that in addition to the Scheduled Castes and the Scheduled Tribes there are other communities who are equally backward. And so for the other Backward Classes the constitution has made certain provisions, one of which is to appoint a commission to investigate into the conditions of the Backward Classes. The central government asked the state government to draw up a list of Backward Classes in each state and to give assistance to such Backward Classes.

The term "Backward Classes" has not been defined in the Constitution. So it is a bit difficult to determine who are "Backward Classes". Happily, the Supreme Court has laid down certain guidelines in ascertaining any class as "Backward Class". The real test is whether they are "socially" and "educationally" worse off than the rest of the citizens of India. Both social and educational backwardness must be present. Existence of only one will not render any class as a "Backward Class".

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B. Administration of the Scheduled Areas and the Tribal Areas

This topic may be studied under two heads—1. Administration of Scheduled Areas and Tribal Areas other than of Assam, Meghalaya and Mizoram and 2. Administration of the Tribal Areas of Assam, Meghalaya and Mizoram. Let us take up them one after another.

1. Administration of Scheduled Areas and Tribal Areas other than in Assam, Meghalaya and Mizoram

Some areas are declared by the constitution as Scheduled Areas and their administration is placed in the hands of the President, though such areas fall within the areas of some States or Union Territory. Such areas are included in the Fifth Schedule of the Constitution. This kind of separate treatment in administration is necessary because of the backwardness of the people residing in those areas. In addition to the Scheduled Areas the tribal areas other than those of Assam, Meghalaya and Mizoram are also included in the Fifth Schedule.

The central government is empowered to give directions to the respective states about the administration of the Scheduled areas. The Governors of such States (having Scheduled Areas) have to send reports to the President from time to time. For that purpose Tribes Advisory Councils are constituted to give advice on the matters relating to the tribes to the Governors of the respective States.

The Governor is empowered to direct that any particular Act of parliament or of the legislature of the State concerned shall not apply to a Scheduled Area or he may direct the modifications of such Act for the purpose of application in a particular "Scheduled Area". The Governor is also given the power to make regulations to prohibit or restrict the transfer of law by the Scheduled Tribes among the Scheduled Tribes. The Governor can regulate the allotment of land and also regulate the business of money-lending. The regulations made by the Governor must have the assent of the President.

There shall be a commission appointed by the President to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. A commission was, in fact, constituted with Mr. U.N. Dhebar as Chairman in 1960 and the Dhebar Commission submitted its report to the President in 1961.

2. Administration of Tribal Areas in Assam, Meghalaya and Mizoram.

The Tribal Areas under this head are dealt in the Sixth Schedule of the constitution. They comprise the following eight units :

- | | | |
|---------------------------|---|------------|
| 1. Karbi Anglong district | } | Assam. |
| 2. Mikir Hill district | | |
| 3. Khasi Hill district | } | Meghalaya. |
| 4. Jaintia Hills district | | |
| 5. Garo Hill district | } | |
| 6. Chakma district | } | Mizoram. |
| 7. Lakher district | | |
| 8. Pawi district | | |

These eight units are to be administered as autonomous districts. Although these areas are not outside the domain of the government of Assam, Meghalaya or Mizoram, as the case may be, there are District Councils and Regional Councils that exercise certain legislative and judicial functions. These councils are broadly representative bodies. They are empowered to make law in some specified subjects such as management of forests (other than reserved forests), inheritance of property, marriage and social customs. The council can assess and collect land revenue and impose some taxes on specified items. The law enacted by the council shall have no effect unless assented to by the Governor.

As regards the matters over which the District and Regional Councils are given the power to make laws, the law made by the state legislature shall not extend to such areas, unless the District Council concerned so directs by a notification. As for other matters, the Governor of the state may direct that an Act of the parliament or the state legislature shall not apply to an autonomous district or shall apply only with modifications as may be specified by the gubernatorial notification. The council has also the judicial power, civil and criminal, of course, subject to judicial control of the High Court as the Governor may from time to time specify.

The tribal areas are named in the Sixth Schedule and are eight in number. They are divided into three parts. There is one thing common to them—each area is an autonomous district. The term “autonomous” means the power or right of self-government. In fact, the tribal areas under study have partial self government. But the autonomous districts are not always peopled by the same tribe and hence the Governor may, by public notification, divide a district into autonomous regions. The Governor has the additional power to determine the area and the boundaries of each district. He may affect changes in the boundaries of the area and even may change the name of a district.

The Tribal Areas Under Study

Part I—In the state of Asam.

1. North Cachar Hills District.
2. The Karbi Anglong (earlier called Mikir Hills) District

Part II—In the state of Meghalaya

1. Khasi Hills District.
2. Jaintia Hills District.
3. Garo Hills District.

Part III—In the union territory of Mizoram.

1. The Chakma District.
 2. The Lakher District.
 3. The Pawi District.
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District councils and the Regional councils

The most important administrative and judicial mechanisms of the tribal areas are the District Councils and the Regional Councils. The administration of a district is vested in the District Council, while the administration of a “region” is vested in the Regional Council. The Regional Council may sometimes give to the District Council some powers in addition to those given to a District Council under its constitution. The first constitution of the District

and the Regional Councils in made by the Governor in consultation with the existing tribal councils and other tribal organisations of the district and the region. After the commencement of the first constitution of each district and region other rules are framed by the District Council and the Regional Council with the approval of the Governor.

Legislative and judicial functions of the District Councils and the Regional councils

District Councils and the Regional Councils have the power to make laws on topics of legislation as mentioned in paragraph 3 of the Schedule. The laws so made must receive the assent of the Governor, without which these laws will have no effect.

The Governor has the overriding power to annul any Act or resolution of District or Regional Council, if it is likely to endanger the safety of India or is likely to prejudice public order and take such steps as he thinks necessary and he may even take upon himself all or any of the powers of the councils. Any order made by the Governor must be laid before the state legislature and unless revoked by the state legislature it will continue for a period of 12 months. This period may be extended again and again by the state legislature but only for 12 months at a time. The Governor can, however, cancel it earlier.

District Councils and the Regional Councils are empowered to constitute village councils or courts for trial of suits and cases in which the parties are members of Schedule Tribes, other than suits or cases for which special provision has been made. These village councils function to the exclusion of any court in the state. The appellate powers over these village councils are with the District Councils and Regional Councils. The High court also exercises such jurisdiction as the Governor by an order may specify. But with effect from 2 April 1970 with the coming of the Assam Reorganisation (Meghalaya) Act, 1969, the village councils try only such suits and cases which are given to them by the rules made by the Governor. The result is that now the District and the Regional Councils cannot make such rules. Moreover, the judicial powers of the District Councils and the Regional Councils with regard to the Code of the Civil Procedure and the Code of Criminal Procedure have been limited to the extent to which the Governor specifies for that purpose.

Financial Functions of the District Councils and the Regional Councils

The District Councils and the Regional Councils in their respective jurisdictions have power to assess and collect land revenue in accordance with the principles for the time-being followed by the Government of the state within the jurisdiction of the state. These councils also have power to levy and collect taxes on lands, building and tolls. The District Council can levy and collect: (a) taxes on professions, trades, callings and employments; (b) taxes on animals, vehicles and boats; (c) taxes on the entry of goods into a market for sale therein and tolls on passengers and goods carried in ferries and (d) taxes for the maintenance of schools, dispensaries or roads. It is to be noted that the councils have to make regulation for levy and collection of taxes and these have to be assented to by the Governor. The District Council makes regulations for money lending and trading by non-tribals and make regulations on topics ancillary thereto. These regulations are to be published in the official gazette of the state.

Other functions of the District councils

The District Council may establish, construct or manage primary schools in the district with the prior approval of the Governor and may determine the language in which the primary education in primary schools will be imparted. The Governor can also entrust to the District Council or its officers certain functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare etc.

AMENDMENT OF THE CONSTITUTION

Those who are dissatisfied with the constitution have only to obtain a two-thirds majority, and if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the constitution cannot be deemed to be shared by the general public.

—Late Dr. B.R. Ambedkar
(Chairman, Draft Committee of the
Constituent Assembly)

Sometimes the legislature may go wrong, but ultimately the fact remains that the legislature must be supreme and must not be interfered with by the courts of law in such measure of social reform. Otherwise you will have strange procedures adopted. Of course one is the method of changing the constitution.

—Jawaharlal Nehru

If the constitution is to endure, it must necessarily respond to the will of the people by incorporating changes sought by the people.

—Justice D.G. Palekar
in *Kesavananda Bharati v State of Kerala*,
(1973) 4 SCC 225

The theory that the parliament cannot exercise its amending power so as to damage or destroy the basic structure of the constitution was propounded and accepted for the first time in Kesavananda Bharati's case.

—Justice Y.V. Chandrachud
(Chief Justice of India)

Our unfolding future depends crucially on constitutional amendments. In Kesavananda Bharati's case it has been expressly held the parliament can amend any part of the constitution subject only to the restriction, viz. that the power cannot be used to alter or destroy the basic structure or framework of the constitution.

—N.A. Palkhiwala
(Constitutional analyst)

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AMENDMENT OF THE CONSTITUTION

The constitution can be amended to meet the needs of time

The constitution is an embodiment of certain law which is considered the highest law of the land. Like all laws, the constitution is to serve the needs of the contemporary society. From this it follows that the constitution cannot be unalterable or time-proof. Like all law it must change to fit in the new conditions from time to time. For making such changes in the constitution there is no necessity of convening a new constituent assembly or taking the opinion of the entire population by way of a referendum. This is so, because the constitution itself provides for such amendment. The wisdom of the founding fathers of the constitution made them foresee the need for amending the constitution on appropriate occasions. For that purpose the makers of the constitution of India kept some provisions and laid down the procedures for amending the constitution. Article 368 in an important provision for the amendment of the constitution. This Article gives a detailed information about the procedure that has to be adopted for amending the constitution. Thus, although the constitution of India is generally taken to be a rigid one, the easy procedure by which it can be amended and was in fact amended as many as forty five times within thirty years of our constitutional journey, a second opinion is rightly gaining ground that the constitution of India is flexible and not rigid.

Two modes of amendment of the constitution

The amendment of the constitution of India can be affected by two modes—(i) by affecting such changes in the constitution that do not amount to amendment within the meaning of Article 368 and

(ii) by following the procedure laid down in Article 368 of the constitution which are amendments of the constitution within the meaning of Article 368.

About the Amendment of the Indian constitution late M.C. Setalvad wrote: "Fortunately the method of amendment provided by the constitution strikes a just balance between flexibility and rigidity. It provides a variety of amending processes. Some amendments can be made by ordinary majorities of parliament. Additional safeguards are, however, provided in the amending process in regard to those parts of the constitution which are concerned with the Division of Power between the states and the union. In such cases the concurrence of the legislatures of half the states is required."¹

Now we may discuss the two procedures.

(i) *Alterations of some Articles of the constitution that do not amount to the amendment of the constitution within the meaning of Article 368*—The union parliament can by a simple majority effect certain changes which are deemed to be not amendment of the constitution. For example the creation of a new state or alteration of the boundaries of an existing state can be possible without amending Article 3 of the constitution. Although it is a change in the constitution, this change is not necessary to be done in accordance with the provisions laid down in Article 368. Such a change is possible if the parliament of India adopts a resolution by a simple majority in both the Houses. This is a simple procedure as making an ordinary law.

(ii) *Amendment in accordance with the provisions of Article 368 of the constitution*—Article 368 makes an elaborate provision for the amendment of the constitution. But the procedures laid down under Article 368 may be divided into two categories—(A) where the approval of half of the state legislatures is not necessary and (B) where the approval of half of the state legislatures is essential. We may now study these two procedures under Article 368 in a bit detail.

(A) *Where approval of half of the state legislatures is not essential*—For amendment of all Articles except a few, the parliament of India alone can effect such amendments. The procedure is that it

1. M.C. Setalvad, *The Common Laws in India*, 1960, London, p. 222.

is to be passed by more than fifty per cent of the total strength of each of the House and also by more than two-thirds of the members present and voting in each House. Each House will have to separately pass the Amendment Bill in the aforesaid procedure. The Amendment Bill may be initiated in any of the two Houses. After the Bill is passed in both the Houses in the aforesaid manner, this will go to the President for his assent. Unlike an ordinary legislation, an Amendment Bill cannot but be assented to by the President. The President cannot withhold his assent with regard to an Amendment Bill. Again, if the Amendment Bill is stalled by the second House, there is no procedure for joint sitting of both the Houses to ease the deadlock. It must be passed by both the Houses separately. If it fails in the second House, the Amendment Bill will fall through.

(B) *Where the approval of half of the state legislatures is essential*—There are certain Articles in the constitution which cannot be amended by the parliament without ratifications of at least fifty per cent of the state legislatures. Such provisions of the constitution are (a) the manner of election of the President; (b) extent of the executive powers of the union and the states; (c) matters relating to the Supreme Court and the High Court; (d) distribution of the legislative powers between the union and the states; (e) any of the lists in the Seventh Schedule; (f) representation of the states in the parliament and (g) provisions of Article 368 itself.

It may be of use to know whether there is any provision in the constitution that cannot be amended at all. For that reason we are to know the opinion of the Supreme Court in this matter. In 1967 the Supreme Court held in *Golak Nath's case* that the Fundamental Rights as laid down in Part III of the constitution cannot be amended. But this view of the Supreme Court was overruled by the same court in 1973 in *Keshavananda Bharati's case* where the law laid down was that everything in the constitution can be amended except the "basic structure" of the constitution. The basic structure of the constitution includes (a) the territorial integrity and sovereignty of India, (b) the federal system and (c) the judicial review.

The constitution of India has been subjected to quick changes so much so that as many as forty five times the constitution was amended within a span of three decades. The changes are rapid if we compare the constitutional amendments in other democratic countries having a written constitution, particularly the USA. It will, there-

fore, be proper if we make a brief resume of the constitutional amendments made so far.

A chronological study of the constitutional amendments

1. *The Constitution (First Amendment) Act, 1951*—By an amendment of clause (2) of Article 19 it was made permissible to make reasonable restrictions to be imposed by law on the exercise of the right of freedom of speech and expression. An amendment clause (6) of Article 19 has removed from the scope of judicial review restrictions imposed on the right of citizens to carry on any trade or business where such restrictions have been imposed with a view to enabling the state to undertake any scheme of nationalisation.

By inserting sub-clause (4) the state was given the power to make special provisions for the advancement of any socially and economically backward classes on the scheduled castes and scheduled tribes.

Two new Articles, namely Articles 31-A and 31-B were inserted to meet the obstructions against the Zamindari Abolition Act.

2. *The Constitution (Second Amendment) Act, 1952*—It amended Article 81 for readjusting the scale of representation in the Lok Sabha which became necessary after the completion of the census of 1951.

3. *The Constitution (Third Amendment) Act, 1954*—This amendment replaced the entry no 33 in the Concurrent List in the Seventh Schedule by a new one including food stuff, cattle fodder and jute whose production and supply could be controlled by the centre in the larger interest of the nation.

4. *The Constitution (Fourth Amendment) Act, 1955*—This amendment altered Articles 31, 31-A and 305 and added some new entries in the Ninth Schedule. It was now possible to oust the jurisdiction of the court to interfere with the quantum of compensation to be paid to a person whose property has been acquired by the state.

5. *The Constitution (Fifth Amendment) Act, 1955*—This amendment of Article 3 empowered the President to fix a time limit for the state legislature to express views on any proposal of the central government to affect the area and the boundaries of their respective states.

6. *The Constitution (Sixth Amendment) Act, 1956*—It added a new entry namely entry 92-A to the Union List of the Seventh Schedule with regard to taxes in sale and purchase of goods in the

course of interstate transaction and the corresponding clauses in Articles 269 and 286 of the same subject.

7. *The Constitution (Seventh Amendment) Act, 1956*—This amendment was necessary for reorganisation of the states of India and alteration of their boundaries. Thus Articles 1, 81, 82, 131, 168, 216, 217, 220, 222 and 224 were amended. In addition two new Articles namely Articles 350-A and 350 B were added.

8. *The Constitution (Eighth Amendment) Act, 1959*—This amendment became necessary in order to extend the special provision relating to reservation of seats for the scheduled castes and scheduled tribes and the representation of the Anglo-Indian community by nomination to the Lok Sabha for a further period of ten years from 26 January 1960. For that purpose Article 334 has to be amended.

9. *The Constitution (Ninth Amendment) Act, 1960*—In pursuance of an agreement between India and Pakistan in September 1958 the amendment of the First Schedule that became necessary was effected.

10. *The Constitution (Tenth Amendment) Act, 1961*—By this amendment Dadra and Nagar Haveli were incorporated into India to be administered under the President.

11. *The Constitution (Eleventh Amendment) Act, 1961*—It made possible for a joint meeting of the Lok Sabha and the Rajya Sabha for the purpose of election of the Vice-President.

12. *The Constitution (Twelfth Amendment) Act, 1962*—By this amendment Goa, Daman and Diu which had been under the control of Portugal were incorporated into India as Union Territory.

13. *The constitution (Thirteenth Amendment) Act, 1962*—This amendment was necessary to recognise the formation of Nagaland as new state carved out of Assam.

14. *The Constitution (Fourteenth Amendment) Act, 1962*—This amendment created legislative assemblies in the Union Territories of (1) Goa, Daman and Diu, (2) Himachal Pradesh, (3) Manipur and (4) Pondicherry. The amendment also increased the numbers of representatives from the Union Territories to the Lok Sabha to 25.

15. *The Constitution (Fifteenth Amendment) Act, 1963*—This amendment simplified the procedure for determining the age of a Judge of a High Court. Now the final determining authority was the President in consultation with the Chief Justice of India.

16. *The Constitution (Sixteenth Amendment) Act, 1963*—It made

a restriction on the Fundamental Rights by amending clauses (2) and (4) of Article 19 of the Constitution. It also amended Articles 84 and 173 of the Constitution. Now oath was to be administered on a larger number of functionaries including the Comptroller and Auditor-General of India.

17. *The Constitution (Seventeenth Amendment) Act, 1964*—By amending Article 31, this amendment provided that where any law makes any provision for acquisition of land held by a person under his personal cultivation, the state will have to pay compensation at the market rate, in case the state acquires the land which is within the prescribed ceilings.

18. *The Constitution (Eighteenth Amendment) Bill, 1964*—This bill has not yet been passed by the parliament.

19. *The Constitution (Nineteenth Amendment) Act, 1966*—This amendment abolished the Election Tribunal as an adjudicating authority to decide disputes relating to election.

20. *The Constitution (Twentieth Amendment) Act, 1966*—This amendment by inserting a new Article 233-A validated the appointment, posting, promotion of District Judge if any of it was any way invalid for being not in accordance with Article 233 or Article 235.

21. *The Constitution (Twenty-first Amendment) Act, 1967*—By this amendment of the Eighth Schedule "Sindhi" was recognised as an official language.

22. *The Constitution (Twenty-second Amendment) Act, 1969*—By inserting a new Article, namely Article 244-A this amendment facilitated the creation of an autonomous state consisting of certain tribal areas in Assam and also the formation of local legislature or council of ministers or both. This amendment also changed Article 275 and inserted another new Article namely Article 371-B.

23. *The Constitution (Twenty-third Amendment) Act, 1969*—This Act amended Articles 330, 332, 333 and 334. This extended for another ten years constitutional safeguards for the scheduled castes, scheduled tribes and the Anglo-Indians.

24. *The Constitution (Twenty-fourth Amendment) Act, 1971*—This amendment was necessary to circumvent the ruling of the Supreme Court in the *Golak Nath's case* where it was held that Part III of the Constitution (the Fundamental Rights) cannot be amended. This amendment was made in respect of Articles 13 and 368. Now the parliament was given the power to amend any Article of the Fundamental Rights. It was also now made obligatory for the

President to give his assent to any future amendment of the constitution.

25. *The Constitution (Twenty-fifth Amendment) Act, 1971*—This amended Article 31(2) to enable the legislature to pass a law for the acquisition or requisition of any property for an amount which will be fixed by a law and this could not be challenged in any court of law.

26. *The Constitution (Twenty-sixth Amendment) Act, 1971*—This amendment deleted Articles 291 and 362 that had provided for a privy purse and certain other privileges for the rulers of the former Indian states.

27. *The Constitution (Twenty-seventh Amendment) Act, 1971*—This amendment included the union territory of Mizoram to have a legislative assembly and also a council of ministers for that union territory.

28. *The Constitution (Twenty-eighth Amendment) Act, 1971*—By this amendment it was now possible for the President to declare emergency for any specified parts of India. Formerly emergency could be declared for the whole of the country and not for any part of it.

29. *The Constitution (Twenty-ninth Amendment) Act, 1972*—This amendment empowered the state to take over land from any person who has land in excess of the ceiling without any payment for compensation.

30. *The Constitution (Thirtieth Amendment) Act, 1972*—It raised the number of the members of the Lok Sabha from 525 to 545.

31. *The Constitution (Thirty-first Amendment) Act, 1972*—It enabled the parliament to alter or withdraw the conditions of service and privileges of the officers of the Indian Civil Service by deleting Article 314.

32. *The Constitution (Thirty-second Amendment) Act, 1972*—By this amendment the Kerala Land Reforms (Amendment) Act, 1969 and the Kerala Land Reforms (Amendment) Act, 1971 were included in the Ninth Schedule of the Constitution.

33. *The Constitution (Thirty-third Amendment) Act, 1974*—In order to prevent the coercive and involuntary resignations by the legislators Articles 101 (3) (B) and 190 (3) (B) were amended.

34. *The Constitution (Thirty-fourth Amendment) Act, 1974*—This amendment put an end to the evils of resignations tendered under pressure by the members of the parliament and the legislatures.

It was now provided that even if such resignations were tendered, these would not be accepted, since such resignations were not voluntary but under duress.

35. *The Constitution (Thirty-fifth Amendment) Act, 1974*—This amendment was necessary to provide associate status for the newly acquired state of Sikkim.

36. *The Constitution (Thirty-sixth Amendment) Act, 1975*—As a corollary to the thirty-fifth Amendment it gave the status of statehood to Sikkim that became the twenty second state of India.

37. *The Constitution (Thirty-seventh Amendment) Act, 1975*—It made provision for legislature and council of ministers for the union territory of Arunachal Pradesh.

38. *The Constitution (Thirty-eighth Amendment) Act, 1975*—This amendment provided that the proclamation of emergency by the President and the promulgation of ordinances by the President, Governors and Administrative heads of the union territories are outside the purview of judicial review.

39. *The Constitution (Thirty-ninth Amendment) Act, 1975*—As a corollary to the Thirty-eighth Amendment this Thirty-ninth Amendment provided that the election of the President, Vice-President, Prime Minister and the Speaker are beyond the purview of judicial scrutiny.

40. *The Constitution (Fortieth Amendment) Act, 1975*—This amendment made the Prime Minister immune of the legal process in the same manner in which the President, the Vice-President and the Governor are immune of the legal process.

41. *The Constitution (Forty-first Amendment) Act, 1975*—It made a change in the Ninth Schedule to include 64 central and state laws which were kept outside the scope of judicial scrutiny.

42. *The Constitution (Forty-second Amendment) Act, 1976*—This was the most drastic amendment in the constitution. This was done during the internal emergency at the behest of the Prime Minister Mrs Indira Gandhi. This was so much devastating to the basic aspects of the democratic life and rule of law that many constitutional commentators called it not amendment but revision of the constitution. It changed even the preamble of the constitution. It curtailed the powers of the High Court and created administrative tribunals to deal with the service cases of the public servants. One good feature of this amendment is inclusion of a new chapter called the "Fundamental Duties". When the Janata Party came to power, it rechange-

ed most of the provisions of the Forty-second Amendment and rightly undid the extensive mischief done to the constitution by the Forty-second Amendment. This was done by the Forty-third and Forty-fourth Amendments.

43. *The Constitution (Forty-third Amendment) Act, 1977*—The Forty-third Amendment simply deleted those provisions which were added by the Forty-second Amendment mainly to curb the judicial review. The Articles introduced by the Forty-second Amendment that were repealed by the Forty-third Amendment are Articles 31D, 32A, 144A, 226A, 228A.

44. *The Constitution (Forty-fourth Amendment) Act, 1977*—This was more extensive than the Forty-third Amendment. It deleted some more Articles introduced by the Forty-second Amendment. These were Articles 257A and 329A. It also amended other Articles to restore the pre-1976 position. But one important amendment made by it is repealing the right to property from the chapter of the Fundamental Rights. The right to property has now become an ordinary constitutional right and this has been inserted by a new Article, namely Article 300A.

It may be noted that although the Janata Government tried to do away with the undemocratic measures introduced by the Forty-second Amendment, it succeeded only partly because it had not the required majority in the *Rajya Sabha*. It is for the first time that the Government in power found it difficult to carry the amending measures at ease. So long the Congress had the monolithic control over both the houses, amendment of the constitution was as much easy as an ordinary legislative measure. While amendment of the constitution is itself constitutionally recognised, this should be done sparingly and not so frequently as has been done in the past. A sweeping amendment like the Forty-second Amendment is definitely a misuse of the constitution. All right-thinking men are opposed to such drastic changes particularly when most of the leaders of the opposition party were thrown into jail. Let us hope that there will be no repetition of anything like the Forty-second Amendment.

Basic structure of the constitution cannot be amended.

A question may arise as to whether any part or provision of the constitution of India cannot be amended. This question came up for the first time in *Golak Nath's case* where the majority view of the Supreme Court was that Part III of the constitution that deals

with the Fundamental Rights cannot be amended. This view was not accepted by the Full Bench of the Supreme Court in *Kesavananda Bharati's case* where it was held that everything in the constitution can be amended except the basic structure of the constitution which cannot be amended by the parliament. But the Supreme Court did not spell out what is the basic structure of the constitution. This has to be guessed from the commentaries of the constitutional *pundits* and also the subsequent observations by the Supreme Court on this issue. According to Dr. Durga Das Basu there are three basic structures of the constitution. They are—(1) territorial integrity and sovereignty; (2) federal system and (3) judicial review i.e. the power of the judges of the court of law to declare any action of the executive or the legislature as illegal.

In addition to these three aspects, different judges of the Supreme Court indicated what is the basic structure of the constitution in the case of *Indira Nehru Gandhi v Raj Narain*. In that case Justice Y.V. Chandrachud gave the ruling that democracy is the basic structure of the constitution. In other words, if the democratic way of government is replaced by a system of dictatorship, that will be a destruction of the basic structure of the constitution. In the same case Justice H.R. Khanna held that there are two basic structures in the constitution—(1) secularism and the guarantee under Article 15 of the constitution and (2) free and fair election of the members of the legislature.

Chief Justice S.M. Sikri (as he then was) in the *Kesavananda Bharati's case* (1973) held that the rights guaranteed to the minorities under the constitution constitute the basic structure of the constitution and as such these provisions relating to the minorities cannot be amended by the parliament. Again, Chief Justice Y.V. Chandrachud in the *Minerva Mills case* (1980) observed that the limited power given to the parliament to amend the constitution is itself a basic structure of the constitution and to widen the power as given in Article 368 is a destruction of the basic structure of the constitution.

Despite a very lengthy judgment in *Kesavananda Bharati's case*, the Supreme Court did not define what the basic structure of the constitution is. Although the same matter came up for decision in the *Indira Gandhi's election case* (1975) the Supreme Court did not give a precise definition of the basic structure of the constitution. Chief Justice A.N. Ray then observed: "Basic structure or basic features are indefinable". In the same case Justice K.K. Mathew

observed: "It is impossible to spin out any concrete concept of basic structure out of the gossamer concept set out in the preamble. The specific provisions of the constitution are the stuff from which the basic structure has to be woven."

Thus there is no agreed list of the basic structure of the constitution which are said to be beyond the amending power of the parliament. It is hoped that more light will be thrown on this very vital aspect of the constitution by the constitutional commentators and the judges of the Supreme Court to set at rest all doubts and speculations about it.

We are fortunate to have a precise list of the basic structures of Indian constitution from a constitutional analyst. According to Mr N.A. Palkhivala there are nine elements which are the basic structures of the constitution.¹ These are the following:

1. *The supremacy of the constitution.* The parliament, the Supreme Court and the President or the Prime Minister are all subordinate to the constitution. They are all the creatures of the constitution and not master over the constitution.

2. *The sovereignty of India.* The Republic of India being a sovereign state, it cannot be made a colony or satellite or dependency of any other sovereign country.

3. *The integrity of the country.* No part of Indian territory can be given to a foreign state or subjected to foreign control. Despite the religious and linguistic differences the unity of India is the bed-rock on which the constitution of India rests.

4. *The republican form of government.* There cannot be any hereditary element like the son of the Prime Minister of India becoming the Prime Minister.

5. *The democratic way of life.* Under no circumstances democratic way of life can be given up. There is a guarantee of fundamental rights to ensure justice—social, economic and political; liberty of thought, expression, belief, faith and worship, and equality of status and opportunity.

1. N.A. Palkhivala, 'Should We Alter Our Constitution?' *The Illustrated Weekly of India*, 4-10, —January 1976, p.6. In a word, according to Mr Palkhivala, *Kesavananda's case* ensures that India shall continue to remain a truly free democracy and a sovereign republic unifying separate states.

6. *A state in which there is no state religion.* India will never adopt Hinduism as the state religion and will continue to give equal treatment to all religions. This is called secularism.

7. *A free and independent judiciary.* The judiciary in India will be free from the control of the executive and the legislature.

8. *The federal system of government.* It permits centralisation and decentralisation of power to exist side by side.

9. *The balance between the legislature, the executive and the judiciary.* None of the three organs can use its power to destroy the powers of the other two, nor can any of them shed power to strengthen the other two organs.

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MISCELLANEOUS

A change in the form of government from parliamentary to presidential will be difficult and perhaps legally impossible.

—Justice H.R. Khanna

(Former Judge of the Supreme Court of India)

If you want a more efficient and dynamic government, even if the government be less democratic and be always prone to convert itself into a dictatorship, you may vote in favour of the presidential system. I will not.

—V.M. Tarkunde

(Former Judge of Bombay High Court)

When through the most peaceful revolution on human history under the leadership of Mahatma Gandhi, India achieved her independence from foreign rule and we assembled together in the Constituent Assemble to give to ourselves constitution, the system of parliamentary democracy was adopted by us naturally as the most suited to the country's genius, ethos and background. Anxious to build an integrated nation from a highly pluralistic society with multifarious pulls and pressures the framers of free India's constitution felt that the system of parliamentary democracy alone could protect, sublimate and transcend into a higher purpose all the various conflicting interests.

—Morarji Desai

(Former Prime Minister of India)

My own view is that for India the presidential form of government is preferable to the present system, provided a fair balance of power between the executive, the legislature and the judiciary is maintained. An acceptable presidential form of government can certainly be introduced by way of amendment of the constitution without altering its basic structure.

—N.A. Palkhivala

(Constitutional analyst)

23

MISCELLANEOUS

1. Is the presidential form a better alternative for India ?

A view has been expressed by the pro-government lawyers' conference in New Delhi that we should substitute the parliamentary system of government by the presidential system. They have raised their accusing finger on some of the shortcomings and failures in the actual work of the parliamentary system.

India is committed by its constitution to have a democratic republic. But a democracy can take different forms. Our Constitution because of our close association with England is cast on the model of Westminster.

There are many danger signals which threaten the continuance of the parliamentary system. Parliamentary government requires discipline, the necessity of playing the game according to the rules and a sense of accommodation and compromise. All these qualities are conspicuously absent in India. The present system is destined to break down, unless some radical changes are introduced. Mere plugging the holes or papering over the defects will not do.

Mr. N.A. Palkhivala and Mr. M.C. Chagla hold brief for the presidential form of government. According to Mr. Palkhivala, India could have a presidential form of government in total conformity with the basic structure of the country's constitution and one suiting its genius. According to Mr. Chagla, although the founding fathers for historical and other reasons adopted the parliamentary form, this is not a basic feature of the constitution.

According to Mr. M.C. Chagla with the adoption of the presidential system, the scramble for office will go, because a seat in the

legislature will not lead to the cabinet. As a result, the party system will be considerably modified and the legislators will attend to legislation and matters of policy rather than indulging in abuses and throwing of microphones at each other. Therefore the presidential system will undoubtedly lead to better administration and less infighting among the parties and a less indecent scramble for tickets. But the losing side will be the representative character of the government, because in theory at least a parliamentary government is by the people through its elected representatives; and the Prime Minister and the cabinet hold power so long as the people, through their representatives, declare their confidence in them. But in practice this is not the case.

A very rosy picture can, of course, be painted about the immense improvement which would be seen in our political climate, if we go in for the presidential form of government. In a presidential form in a legislature whether at the centre or the state level the elected representatives will have no chance of becoming ministers or even deputy ministers. They would in that case have little reason to fight with each other or to defect from one party to another. The people moreover, would no longer be ruled by a set of ministers who do not know their job and who in any case have no time for taking policy decisions decisively.

A strong opponent to the presidential form of government is Justice H.R. Khanna. According to Justice Khanna a change in the form of government from parliamentary to presidential will be difficult and perhaps legally impossible. He contends that the constitution has provided parliamentary form of government not for one or two generations but for all generations to come. A constitutional form is not for a passing hour but for an expanding future. Therefore any proposal to change the form of government should be entertained only after deep reflections.

Mr. V.M. Tarkunde, an ex-Judge of the Bombay High Court, is also opposed to the presidential form of government. According to him, the presidential form of government may be more efficient and more dynamic than the parliamentary system but it is prone to convert itself into a dictatorship. One cannot opt for the presidential form of government, because a good government is no substitute for self-government. No convinced democrat should be taken in by the alluring picture which really depicts the merit of an efficient autocracy over an immature democracy.

There is no doubt that the presidential form of government is less democratic, both actually and potentially, than the cabinet form of government. The system of the U.S.A. is just an exception and it should not make us blind to the fact. The reason of the success of the presidential system in the U.S.A. is the unusually sturdy individualism of the average American citizen. The President of the U.S.A. has to deal with the completely short term problems of an economically developed society. But India is a country with an altogether different set of problems. We must not forget that in many Afro-Asian countries the presidential system has been the harbinger of one dictatorship after another. This has been very rightly said by Justice H.R. Khanna: "One most significant fact which we must not lose sight of is the danger of the presidential system degenerating into Caesarism and dictatorship. The experience of the United States and West European countries cannot always provide a safe precedent and model. Their traditions, public values and political climates are different. Whatever might have been the experience of the United States and France about the presidential system, the experience of that system in Asian and African countries has been that hardly any President has gone out of office as a result of election. Only natural death or *coup* has resulted in the displacement of the President. As against that, only in a parliamentary system could Mrs. Gandhi be forced to step down from the office of Prime Minister as a result of elections in 1977, and again only in parliamentary system could she again return to that office in 1980. One looks in vain for such a precedent in Asian and African countries having a presidential system".

Once a person is elected and installed in the office of the President under the presidential system, he is answerable to none during his term of four or five years. He can be pulled down only by the cumbrous and impracticable method of impeachment. Under the constitution of the U.S.A. the President can be removed by the support of two-thirds majority in the senate. But the cabinet system in spite of its defects provides for a relatively greater answerability of those in power. In a parliamentary system, the cabinet must have the confidence of the legislature all throughout. This is not the case for the President in a presidential form of government.

The President in a presidential form of government unlike the Prime Minister in a parliamentary form of government is the sole repository of all the executive powers of the central government. He

does not share power with his colleagues in the cabinet. But democracy abhors concentration of powers and implies the diffusion and decentralisation of powers. From this it follows that the presidential form of Government which concentrates all executive powers in the hands of one person is more undemocratic than the cabinet system. The American Presidency has been rightly described by some writers as "elected kingship". But democracy is anything but kingship—elected or otherwise.

The most unacceptable aspect of the presidential form of government is the motive as well as the opportunity that it would provide to a President in a developing or underdeveloped country for establishing a dictatorial regime. The natural desire of the President to continue in power will supply the motive. His desire to continue in power will be helped by the nature of the problems he has to tackle.

A President in India will be called upon to solve the problems of mass poverty and mass unemployment. But it will not be possible for a President, even if well intentioned and capable, to make any change within a single term in the prevailing economic situation. The situation will compel him to hold on in office for more terms. And people as a whole would like it in country when *Ram Rajya* is preferred to *Swarajya*. If he does not think in this line, his next rival would do.

Apart from motive, an Indian President will be in a more advantageous position to establish a dictatorial regime. Since all powers are accumulated in his hands, he would have less hurdles to come across. Being the head of the armed forces he would have little difficulty to raise a hand that the existing constitution is unworkable and so he would seek and get the support of the people to throw the constitution to the winds. In this way he would become the head of a 'revolutionary government' which happened many times in present history.

Thus a Presidential form of government does not seem to be the answer to the present crisis in India. Instead we must strengthen the forces that are crying out the removal of political corruption and electoral reforms to ensure the return of honest candidates in the legislature. We may conclude in the words of Justice H.R. Khanna, "In history of nations, occasions sometimes arise when it is not the provisions of the constitution which fail, it is people or their representatives who fail the constitution. No wonders, if that is not true

of us and our representatives. Each system or government, whether it is a parliamentary system or the presidential system, has its strong points and weak points. Ultimately every thing depends upon the way the system is actually worked. Some shortcomings and defects have, no doubt, come to the surface in the functioning of the parliamentary system in India, but the fault for that lies not so much in the system as in our own weaknesses of character, and the way we have worked the system."

According to Mr. N.A. Palkhivala a switch-over from the parliamentary to the presidential form of our government is not a matter of concern to our people alone. We constitute one-sixth of the human race and our choice between the two roads that diverge in the wood will have an imponderable impact on the cause of democracy throughout the world.¹

2. Participation of a citizen in the government and politics of the state.

In a democratic country like India a citizen has ample opportunities to participate in the government and in politics of the country. There are various mediums through which he can play his part. The following are the most important ways.

(i) *By votes in the elections*—A citizen has the most effective weapon of exerting his role in the politics and government by exercising his franchise. Thus he chooses the party and contributes his share in the making of the government.

(ii) *By standing as a candidate in the election*—A citizen can himself become a legislator by contesting the election. If he is elected he becomes a member of the parliament or the Legislative assembly. Again, if his party forms the majority in the parliament, he may be chosen as a minister. In that case he becomes an executive in the government.

(iii) *By writing in the newspapers*—A citizen has the right to make gentle criticism of the policy and works of the government with the helps of newspapers. He can also make constructive suggestions for improving the working of the government.

1. N.A. Palkhivala, 'Should We Alter Our Constitution?', *The Illustrated Weekly of India*, 4-10, January 1976, p. 6.

(iv) *By speeches in public meetings*—A citizen can effectively mould the public opinion by speaking in the public meetings. Thus various people spoke in various ways about the suitability or otherwise of the presidential form of government. In this way the citizens put forward their views to the public and thus bring to the knowledge of the government the various implications and problems that are bound to develop.

(v) *By organising a new party*—The citizens can make a new party if they feel that the existing parties are not adequate to meet their demands. Thus in 1977 a new party under the name and style of the Janata Party was created. As a matter of fact, it is through this party that the dictatorial emergency regime of Mrs. Indira Gandhi was overthrown.

(vi) *By organisation of some association*—The citizens also can form associations like cultural association, religious society, sports club etc. to influence the government or correct any wrong decision of the government that might affect their interests.

(vii) *By sending memorandum to the government*—Any citizen can write to the government for redress of his grievances. Thus the student leaders meet the Chief Minister or the Prime Minister to express their view points to him and give him their points in writing.

3. PUBLIC SERVICES

The Union Public Service Commission

The All India services examinations are conducted by the Union Public Service Commission. The members of the Union Public Service Commission are appointed by the President. There is one Chairman of the Commission. The number of the members of the Commission vary from time to time according to the needs felt by the President. One half of the members are those persons only who have been in the government service for at least 10 years. The members hold office for a period of 6 years. But a member may leave his job by resignation and he may be removed by the President on the ground of misbehaviour proved by the Supreme Court of India.

Functions—(1) The Union Public Service Commission conducts the examination for appointments to the services of the government of India.

(2) The Commission gives advice to the President when the President wants some advice.

(3) The Commission submits an annual report to the President about the works done by it for that year.

The State Public Service Commission

The State Public Service Commission conducts examinations for appointments to the services of the state government. The members Chairman of the State and Public Service Commission are appointed by the Governor of that state. A member of the State Public Service Commission holds office for a period of 6 years and he must retire at the age of 60. But he can leave the job by resignation or he can be removed by the President on ground of misbehaviour proved by the Supreme Court. So, one important thing is that although the Governor appoints the members of the State Public Service Commission, the only authority who can dismiss a member is the President of India.

Functions—(i) The State Public Service Commission conducts all examinations for appointments to the services of the state government.

(ii) The State Public Service Commission gives advice to the Governor of the state when the Governor wants some advice.

(iii) The State Public Service Commission submits an annual report to the Governor about the works done by it for that year.

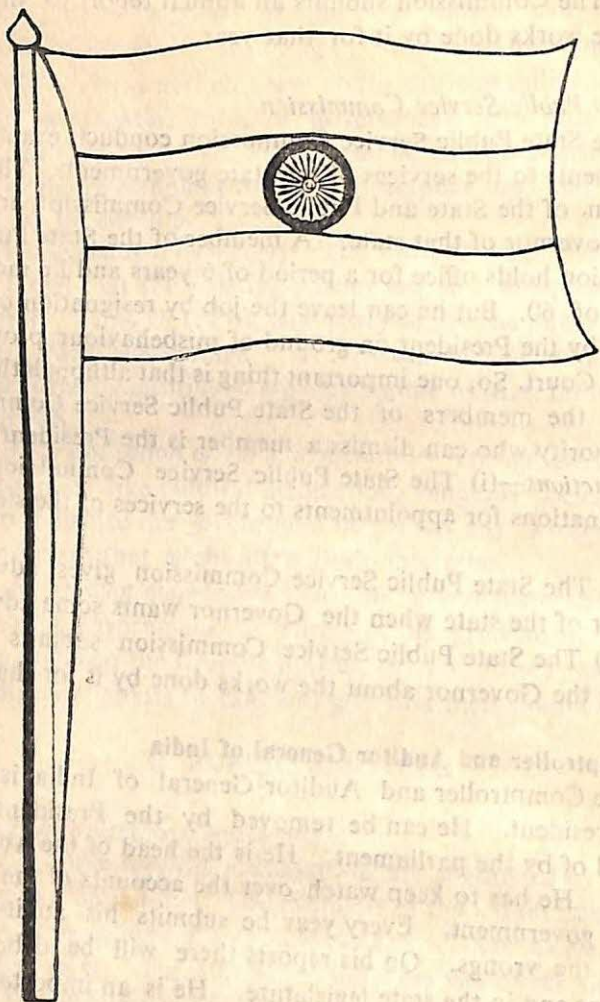
The Comptroller and Auditor General of India

The Comptroller and Auditor-General of India is appointed by the President. He can be removed by the President's decision approved of by the parliament. He is the head of the Audit Service in India. He has to keep watch over the accounts of the union and the state government. Every year he submits his audit-report and finds out the wrongs. On his reports there will be debates in the parliament and in the state legislature. He is an important part of the finance department of the country.

4. NATIONAL SYMBOLS

National Flag

The National Flag is a horizontal tricolour of deep saffron (*Kesari*) at the top, white in the middle and dark green at the bottom in equal proportion. The ratio of the width of the flag to its length is two to three. In the centre of the white band is a wheel, in navy blue, which represents the *Charkha*. Its design is that of the wheel



National Flag

(*chakra*) which appears on the abacus of the Sarnath Lion Capital of Asoka. Its diameter approximates to the width of the white band and it has 24 spokes.

The design of the national flag was adopted by the Constituent Assembly of India on 22 July 1947. Its use and display are regulated by a code.

State Emblem

The State Emblem of India is an adaptation from the Sarnath Lion Capital of Asoka as preserved in the Sarnath museum. In the original, there are four lions, standing back to back, mounted on an abacus with a frieze carrying sculptures in high relief of an elephant, a galloping horse, a bull and a lion separated by intervening wheels (*chakras*) over a bellshaped lotus. Carved out of a single block of polished sand stone, the capital is crowned by the Wheel of the Law (*Dharma Chakra*).



सत्यमेव जयते

State Emblem

In the State Emblem adopted by the Government of India on 26th January 1950, only three lions are visible, the fourth being hidden from the view. The wheel appears in relief in the centre of the abacus with a bull on the right and a horse on the left and the outlines of the other wheels on the extreme right and left. The bell shaped lotus has been omitted. The words, *satyameva jayate*, from the *Mundaka Upanishad* meaning "Truth alone triumphs" are inscribed below the abacus in *davanagari* script.

National Anthem

Rabindranath Tagore's song *Jana-gana-mana* was adopted by the constituent Assembly as the national Anthem of India on 24 January 1950. It was first sung on 27 December 1911 at the Calcutta session of the Indian National Congress. The complete song consists of five stanzas. The first stanza constitutes the full version of the national Anthem. It reads :

*Jana—gana—mana—adhinayaka jaya he
Bharata—bhagya—vidhata.*

*Punjaba—Sindhu—Gujarata—Maratha—
Dravida—Utkala—Banga*

*Vindhya—Himachala—Yamuna—Ganga
Uchhala—Jaladhi—taranga*

*Tava subha name jage,
Tava subha asisa mage,
Gahe tava jaya—gatha.*

*Jana—gana—mangala—dayaka jaya he
Bharata—bhagya—vidhata*

*Jaya he, jaya he, jaya he,
Jaya jaya jaya, jaya he.*

Playing time of the full version of the national anthem is approximately 52 seconds. A short version consisting of the first and last lines of this stanza (playing time approximately 20 seconds) is also played on certain occasions. The following is Tagore's English rendering of the stanza :

Thou art the ruler of the minds of all people, Dispenser of India's destiny.

Thy name rouses the hearts of Punjab, Gujarat and Maratha.

Of Dravida and Orissa and Bengal,

*It echoes in the hills of Vindhya and Himalayas,
mingles in the music of Jamuna and Ganges
and is chanted by the waves of the Indian Sea.*

They pray for thy blessings and sing thy praise.

The saying of all people waits in thy hand,

Thou dispenser of India's destiny

Victory, victory, victory to thee.

National Song

Bankim Chandra Chatterjee's *Vande Mataram*, which was a source of inspiration to the people in their struggle for freedom, has an equal status with *Jana-gana-mana*. The first political occasion on which it was sung was the 1896 session of the Indian National Congress. The following is the text of its first stanza:

Vande Mataram ;

Sujalam, suphalam, malayaja—shitalam,

Shasyashyamalam, Mataram ;

Shubhrajyotsna, pulakitayaminim,

Phullakusumita—drumadala—shobhinim,

Suhasinim sumanhura—bhashinim,

Sukhadam varadam, Mataram ;

The English translation of the stanza rendered by Shri Aurobindo is :

I bow to thee, Mother,

richly—watered, richly—fruited,

cool with the winds of the south,

dark with the crop of the harvests,

the Mother ;

Her nights rejoicing in the glory of the moonlights

her lands clothed beautifully with her trees

in flowering bloom,

sweet of laughter, sweet of speech,

the Mother, giver of boons, giver of bliss ;

National Days

Army Day	15 January
Children's Day	14 November
Mahatma Gandhi's Birthday	2 October
Maritime Day	4 April
Navy Day	21 December
Republic Day	26 January
Teachers' Day	5 September
Territorial Army Day	18 November

National Calendar

A uniform national calendar based on the *Saka* era with *Chaitra* as its first month and a normal year of 365 days was adopted from 22 March 1957 along with the Gregorian calendar for the following official purposes : (i) *The Gazette of India*, (ii) news broadcasts by All India Radio, (iii) calendars issued by the government of India, and (iv) government communications addressed to members of the public.

The dates of the National Calendar have a permanent correspondence with the dates of the Gregorian calendar—I Chaitra falling on 22 March normally and on 21 March in a leap year.

CHAPTER XXIV

EPILOGUE

The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and inequality of opportunity. The ambition of the greatest man of our generation (Mahatma Gandhi) has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.

—Jawaharlal Nehru.

If the political writing on the wall is not heeded, no government worth the name will be there to rule this country of 670 million People who surely deserve better than what they are getting 33 years after India became free.

—Late V. V. Giri
(Former President of India)

It looks as if all virtue has gone out of the Indian political system. There is no organ of state which has not suffered some damage in recent years. The executive has lost its moral authority, the legislature its capacity to control the executive, the bureaucracy its elan and the higher judiciary something of the aura surrounding it. Thus all the institutions which are supposed to keep a free society going have taken a severe drubbing.

—Sham Lal

(Political analyst), 'Crumbling Pillars of State',
The Illustrated Weekly of India, 1-7, November 1981, P. 6.

EPILOGUE

Only a year ago we, the people of India, took part in a gigantic process of political action through what were the biggest elections in the world. It has rightly been described to be an act of faith in which millions over millions all over the country exercised their choice regarding the future rulers of the country. It was something unique, a fascinating sight for all including those who are members of no political party, to see the people, the mass of them, recording their verdict on the achievements and failures of politicians and political parties. The elections have shown that there is no office more important than that of a voter in a democracy and that no one should take him for granted. Likewise, there is no age more important for the future of the country than that of youth and that no one should take them for granted. The youths have a reservoir of goodwill and earnestness. It is the rich treasure of the nation. Let no one draw upon them too heavily or dissipate it for personal, partisan or other ignoble ends.

Before 1974 democracy was the most beautiful word in our dictionary. But today it is getting dirtier and dirtier. The question that raises its head is : is democracy not suited to our national character ? In trains and buses we hear people suggesting that dictatorship is the only remedy for our ills. Some even prefer the reimposition of the emergency. They suggest that a strong dose of authoritarianism, administered over a ten-year-period, would transform sick India ruddy and robust. They want an iron hand to put down disorder and a steam-roller government to make the country strong and united. The feeling that we are unfit for democracy is slowly becoming a conviction.

In India democracy worked successfully for the first twenty years of the inception of independence. This was partly due to effective one-party rule under one capable leader. This one party congress was identified with the nation. Democracy is defined as the rule by the consent and dialogue. The people of India like anaesthetised patients gave consent to the rulers. But there was no dialogue between the rulers and the ruled. It was the monologue of one strong personality that mattered.

Today the people are disgusted with the power game going on. A vast majority of the politicians have proved to be corrupt and unscrupulous—a set of vainglorious men who have a vision only of their own and not of their country. Unfortunately, we still tolerate them, encourage them, applaud them and even vote them to power. The simple, honest and ordinary people do not understand this kind of democracy and it is no wonder that in disgust they turn to authoritarianism as an alternative.

The Representation of the People Act should be suitably amended to put an end to malpractices during elections and the defection of the legislators, whether in the state or in the centre, from one party to another as part of the power game. But it may not be possible to ensure quality of the legislators unless the parties are more scrupulous in selecting their candidates. Unfortunately, the worth of a candidate is not considered. What is considered is his castes and connections. Our politicians lack in the parliamentary behaviour and behave like unruly children or fishwives.

But for all such things the people as a whole are also responsible. According to Aneurid Bevan democracy means equality. But in a caste-ridden country like India how can we have equality when a Brahmin feels polluted even by the shadow of the untouchable. The social equality is conspicuous by its absence. So long as we have a caste-system in the country, it is almost impossible to resolve this conflict. It is said that the people get the government that they deserve. An alert citizenship is a prerequisite of democracy. Only an intelligent public opinion can keep the government on its toes. In a true democracy it is the rulers who fear the ruled. In India the case is just the opposite.

The educated class is no better. They are seen more busy in their own struggle for existence. They are least interested in the welfare of the people. Their interest in politics is only in gossips.

The intellectuals do not bother for the public interest. They are a selfish and cowardly people.

As for the newspapers the guardians of public opinion, they do not speak out when speaking out is necessary. They do not fight against injustice or social evils. A serious flaw in our set-up is our intellectual poverty. A true democracy is one where the country is ruled by ideas rather than by men. The leadership is so much magnified that out of it emerges the personality cult that saps the democratic foundation.

Illiteracy is a big hindrance for democracy. There are other social problems like the multiplicity of religions, castes and languages. Again, the vast size of the country creates difficulties for the smooth working of a free form of government.

Let us see the conditions of local self-government. Nowhere in the world perhaps has the local self-government such a dismal picture. Look at how the towns and cities in India are administered. From this one will fairly understand how our country is administered. "Our municipalities are a nursery where incompetent men learn how to be corrupt: they graduate into the *Vidhan Sabha* and become rulers of the nation. The same story can be told of our *Panchayats* those "village republics" of old which are today hotbeds of caste rivalry and exploitation".

Administration has almost reached its nadir. In most parts of the country law and order is deteriorating day by day. Students are prepared to take to the streets and burn and destroy trams and buses in the sacred cause of their right. The ministers have no time to attend to their work or their files. More interesting and important work is to keep their voters satisfied and to indulge in the game of counting of numbers to see which party is in the ascendancy.

According to Justice V.R. Krishna Iyer what the founding fathers had tried to establish was not merely a welfare state but a social justice state. They had tried to fashion a socio-economic revolution. The directive principles and the fundamental rights were designed to make a new history and destiny for the nation, a new economic order, a material base for the people's happiness with a federal and parliamentary form of government. The paramount goal was, as Nehru said, to free India through a new constitution, to feed the starving people, to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity. But thirty one years of Constitutional journeys have made

human life and human rights distant neighbours. There is a growing gap between the haves and the have-nots.

If we look back on our forty-one years of political independence, we find that the developmental plans that were executed through various five-year plans had not touched even the fringe of the question of economic emancipation of the masses, though invariably all political parties clamoured that their first job, if elected, would be the rehabilitation of the masses, to ensure every citizen three square meals a day, enough cloth to wear, a decent hut to live in and all social amenities. These three problems affecting 50 per cent of the population have not been solved, though Gandhiji forty-two years ago had stated that the political independence had no meaning, if the economic emancipation of the masses did not follow in tow. Instead of wasting time on whether the presidential form of government would be a better alternative, we should think of fighting these cancerous evils of hunger, poverty and unemployment on a national war footing for India to exist.

According to Mr. N.A. Palkhiwala, there is no other democracy where there are so many laws and so little justice and where so much arbitrariness and unfairness, official negligence, abuse of power and gross corruption are meekly suffered by the people who have neither the will nor the means to seek redress in a court of law. For every one case of injury or injustice which is taken to the court, at least a hundred similar cases never see the light of day. For how many years did courtless undertrial prisoners suffer the inequity of being imprisoned for a longer term than the maximum impossible for the crime for which they were never tried and of which they were never convicted. Without changing the basic structure of the Indian Constitution, certain constitutional provisions and laws should be amended or added to make democracy more mature, effective and responsive to the local conditions. The constitution of India which had been drafted by men of vision and character should be preserved in its pristine glory. But year after year its spirit was being violated forcing serious distortions to creep into it. The political parties should be asked to keep audited account of their funds and there should be some minimum qualifications for persons seeking to be members of parliament and state legislatures.

India could have a presidential form of government in total conformity with the basic structure of the country's constitution and one suiting its genius.

The judiciary is the last hope of the citizen. It must uphold the constitution and other laws of the land at all times. It must courageously challenge the executive actions exercised outside the provisions of the constitution and other laws of the country without fear and favour. It must be the watch dog of the freedom of the individual entrenched in part III of the constitution and the larger inherent freedoms of man in society.

Citizen

In order to be in a position to perform the foregoing functions adequately, the judiciary must be free and independent. Both the state and the general Republic must make certain sacrifices, to ensure the much desired freedom and independence of the judiciary in order to obtain justice at all times. "Justice", according to Henry Cecil, "is such a precious commodity that everything reasonable should be done to attain the highest standard".¹

It is in the interest of the maintenance of the stability of the country and the social equilibrium that the state should endeavour to attain justice at whatever cost.

1. Henry Cecil, *The English Judge*, p. 113

GLOSSARY

Adjournment—Suspension of a sitting of a legislative body either by the Speaker or on the demand of the majority members of the house. A house is adjourned automatically, if a quorum of members is not available.

Amendment—In connection with a bill, it means a proposal for alteration of a bill. In connection with any provision of the constitution, it means a change wholly or part about the said provision of the constitution.

Autonomy—In its political sense it means a limited self-government short of independence.

Ballot—Secret voting, originally be means of a small ball or ballot placed in a box.

Budget—Statement of the Finance Minister in the *Lok Sabha* or *Vidhan Sabha* (usually in the month of March) outlining proposals for taxation and estimating the expenditure for the forthcoming year.

Bureaucracy—It means government by an elaborate system of administrative departments and officials which generally tends to become unwieldy and laborious in its operation. It produces red-tapism or over-systematisation.

By-election—Election at a time between two general elections to fill up the vacancy arising out of the death, resignation or removal of the member in the *Lok Sabha* or the *Vidhan Sabha*.

Cabinet—It is a private room in which confidential advisers of a sovereign or Chief Minister of a state meet. It also stands for group of ministers or advisers. Now it is commonly used to mean the council of ministers of the union government or the state government.

Capitalism—It is the economic system founded on a free enterprise and private ownership of the means of production and distribution of goods.

Casting vote—It is the name given to a vote cast by a person presiding at a meeting of a body of which he is not a voting member. In the events of the members being equally divided on an issue, he casts the deciding vote.

Cold War—It is a struggle between two countries or groups of countries waged by use of political and economic strategy, propaganda and other measures short of armed combat.

Colony—It is a territory permanently settled by people from another land. A measure of internal self-government may be granted to a colony. It may then become responsible for its own social policy—labour, education or housing. But the mother country or the colonial power still maintains the right to *veto* (forbid) acts passed by the local government.

Colourable legislation—When a parliament with limited powers like the Indian parliament legislates, the legislation has to be closely examined in order to determine whether parliament has exceeded its powers in enacting it. The transgression of its powers may be patent, manifest or direct, but it may also be disguised, covert and indirect. Legislation by which parliament has exceeded its powers in a covert or indirect manner has been described as “colourable legislation” by some judges. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. This has led courts to lay down the principle that where the law-making authority is of a limited or qualified character, it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature is really doing.¹

Commonwealth of Nations—For more than one hundred years England ruled so many countries all round the globe that a common saying was: “The sun never sets on the British empire.” Countries in that empire began to want freedom

1. M.C. Setalvad, *The common Law is India*, 1960, London p. 184.

in the early 1900s. Commonwealth of Nations is a group of countries that were all part of the British empire, which does not govern them any more. Members of the commonwealth sort out mutual problems and have agreements for trade and defence.

Originally called the British Commonwealth of Nations, it is a free association of sovereign independent states of England, Canada, Australia, New Zealand, Lesotho, Swaziland, Malta, Barbados, Jamaica, Trinidad and Tobago, Mauritius, Western Samoa, Fiji and Bahamas and the republics of India, Sri Lanka, Bangladesh, Ghana, Gambia, Guyana, Nauru, Sierra Leone, Cyprus, Nigreja, Kenya, Singapore, Tanzania, Botswana, Malawi, Malaysia, Uganda, Zambia, Tonga, Bermuda, Grenada, Seychelles. In addition, some 50 colonies, protectorate and trust territories which are dependencies of England, Australia or New Zealand are also members of the Commonwealth.

Although the Commonwealth has no written constitution, its members are bound together by a unity of ideals and interests. The countries of the Commonwealth have some common constitutional features. The queen of England is the head of the parliament of the Commonwealth countries (except those of the republics and Malaysia). It is the queen of England in whose name the administration is carried on. In all such countries the queen is represented by the Governor-General. The Governor-Generals of those countries are appointed by the queen on the recommendation of the government of the country concerned. The Governor-General is, however, not influenced by the government of England.

Communism—It is the theory as expounded by Karl Marx and Engels who aimed at the creation of the society in which the private ownership of land, factories, banks, trading houses etc. is abolished and everyone receives what he needs and he works according to his capacity and where the use of force are justified to bring about the creation of such a society.

Confederation—It is a free association of sovereign states united for some common specific purposes.

Consolidated Fund—It is the name of the fund into which all taxes are paid and from which all authorised payments are made.

- Constituent Assembly**—This is an assembly convened for the purpose of drawing up a constitution, but it comes only after there is a breakdown in the existing machinery of the government.
- Democracy**—It is a form of government in which the sovereign power resides in the people as a whole and is exercised either directly by them or by their elected representatives.
- Dictatorship**—It is a rule by one man who, in deciding what to do about the internal or external affairs of the country he controls and who does not have to consider or consult anybody but himself.
- Electoral College**—It stands for any body of the electors, limited in number, meeting in one place to choose a public official.
- Estimates**—Government department's forecasts of expenditure for next financial year.
- Fascism**—It is a system of government which denies all fundamental rights to its citizens and establishes one-man-rule that is accepted as infallible.
- Federation**—It is a system of government in which smaller states or provinces of a state hand over certain powers, such as foreign policy, defence, tariff to a central government, while controlling over some parts of their internal affairs.
- Finance Bill**—Bill introduced after the passage of the budget to impose or change taxation.
- Franchise**—Right to vote.
- Habeas Corpus**—Writ ordering a gaoler to "produce the body" of a prisoner in a court of trial.
- High Commissioner**—Representative of the government of England in a Commonwealth country or of a Commonwealth country.
- Imperialism**—It is the policy of empire-building and conquests transcending the national frontiers. It now means every policy of conquests and colonial expansion. Since the First World war, imperialism has more frequently taken the form of economic penetration than that of political domination.
- Leader of the house**—Leading member of government (usually the Prime Minister) responsible for ordering business of the house of commons in England and *Lok Sabha* in India.
- Leader of the Opposition**—Leader of the largest opposition party in the legislature is called the leader of the opposition.

League of Nations—The international co-operation in the permanent sense began in 1920 with the birth of the League of Nations. It was conceived during the First world war by progressive thinkers such as President Woodrow Wilson of the U.S.A., Viscount Cecil of England and General Smuts of South Africa. The covenants of the League was written into the sense treaties which ended the war. It was a treaty which bound the nations to co-operate for peace and to act together against any nation which broke the peace. In many ways, the League resembled the UNO. The League had failed to prevent the outbreak of the second World War. In fact the collapse of the League was responsible for the outbreak of the Second World War.

Nationalisation—It is the measure by which the state takes over the management of the trades, industries etc. with or without compensation. Thus it is a change from private to state ownership and control.

Ordinance—It stands for "that which is ordained by the authority". Ordinance is an act promulgated by the head of the state, (the President or the Governor) when the legislature is not in session. It has to be approved by the legislature within a specific period.

Parliamentary privilege—"The sum of peculiar rights enjoyed by each house individually without which they could not discharge their functions and which exceed those possessed by other bodies or individuals".—Erskin May.

Plebiscite—It is a direct vote by the voters of a country or a district on a specific question. In the usual election, the people vote for or against the government on all the policies for which it stands, but in a plebiscite or referendum, they vote only on one particular question.

Plural voting—It is the system of allowing a person to cast more than one vote in the same election. The voter is eligible to vote in more than one constituency by virtue of its special position, for example, a city and a university vote by the same person.

Proportional representation—It is the method used in an election by which the votes are so counted that each party has representation in the elective body in proportion to its strength so as to ensure the representation of the minorities.

Quorum—The minimum number of members required to be present to permit business to be transacted.

Residuary powers—In a federation where the powers are divided between the centre and the federating states or units under a system of three lists—central, state and concurrent, the powers relating to new spheres of administration not covered by any of the three lists are known as residuary powers.

Select Committee—Committee set up by the *Lok Sabha* for a special purpose e.g. the Estimates Committee and the Committee of Public Accounts.

Shadow Cabinet—Leaders of opposition parties in the legislature.

Socialism—This political and economic theory advocates that all key industries, commerce and important national services like health and education should be under the control of the state.

Splinter group—When in politics a group of dissidents break away from the original or larger political organisation, the dissident group is called the splinter group.

Suffrage—Right to vote.

Treasury Bench—Government front bench in the legislature.

United Nations Organisation—On 24 October 1945, fifty-one nations created the international peace organisation called the United Nations. It was first prepared by Franklin D. Roosevelt and Winston Churchill in the Atlantic charter, issued in 1941. The first plans for the United Nations were made at a conference at Dumbarton Oaks in Washington D.C. in 1944. The United Nations has five major goals—1. to promote peace and security; 2. to bring about friendly relations among all nations; 3. to encourage respect for the rights and freedom of others; 4. to improve living conditions, education and health; and 5. to develop an effective system of international law. The United Nations works towards its goals through six major organs. Nations must agree to these principles in order to become members of the United Nations.

Veto—Right to prohibit or withhold assent, for example, by the President.

Glossary

- Welfare State**—When a state by its concern with measures like public health, insurance against sickness and unemployment and similar things assumes a large share of responsibility for the welfare of its citizens., such a state is called a welfare state.
- Whip**—It is the name given to a member of the political party that is responsible for ensuring the presence of his party members at voting time and for holding them in line with the party.

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